DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 10-680
Title: Carol Howes, Warden, Petitioner
v.
Randall Lee Fields
Docketed: November 24, 2010
Lower Ct: United States Court of Appeals for the Sixth Circuit
Case Nos.: (09-1215)
Decision Date: August 20, 2010
Questions Presented

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Nov 18 2010	Petition for a writ of certiorari filed. (Response due December 27, 2010)
Dec 15 2010	Brief of respondent Randall Lee Fields in opposition filed.
Dec 15 2010	Motion for leave to proceed in forma pauperis filed by respondent.
Dec 29 2010	DISTRIBUTED for Conference of January 14, 2011.
Dec 29 2010	Reply of petitioner Carol Howes, Warden filed. (Distributed)
Jan 10 2011	DISTRIBUTED for Conference of January 14, 2011.
Jan 18 2011	DISTRIBUTED for Conference of January 21, 2011.
Jan 24 2011	Motion for leave to proceed in forma pauperis filed by respondent GRANTED.
Jan 24 2011	Petition GRANTED.
Mar 1 2011	The time to file the joint appendix and petitioner's brief on the merits is extended to and including May 9, 2011.
Mar 1 2011	The time to file respondent's brief on the merits is extended to and including July 8, 2011.
Apr 15 2011	Further extension of time to file the joint appendix and petitioner's brief on the merits to and including May 23, 2011.
May 11 2011	Motion to dispense with printing the joint appendix filed by petitioner Carol Howes, Warden.
May 23 2011	Brief of petitioner Carol Howes, Warden filed.
May 31 2011	Motion to dispense with printing the joint appendix filed by petitioner GRANTED.
May 31 2011	Brief amicus curiae of the United States filed.
May 31 2011	Brief amici curiae of Ohio, et al. filed.
Jul 7 2011	Brief of respondent Randall Lee Fields filed.
Jul 12 2011	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Jul 14 2011	Brief amicus curiae of Donovan E. Simpson filed.

Jul 19 2011	SET FOR ARGUMENT ON Tuesday, October 4, 2011
Aug 2 2011	CIRCULATED.
Aug 8 2011	Reply of petitioner Carol Howes, Warden filed. (Distributed)
Aug 9 2011	Record from U.S.C.A. for 6th Circuit is electronic
Aug 9 2011	Record from U.S.D.C. fo Eastern District of Michigan is electronic
Aug 15 2011	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Oct 4 2011	Argued. For petitioner: John J. Bursch, Solicitor General, Lansing, Mich., and Ginger D. Anders, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) For respondent: Elizabeth L. Jacobs, Detroit, Mich.

PETITION FOR WRIT OF CERTIORARI

RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED

10-680 NOV 18 2010

No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

CAROL HOWES,
Petitioner,

v.

RANDALL FIELDS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court's clearly established precedent under 28 U.S.C. § 2254 holds that a prisoner is always "in custody" for purposes of *Miranda* any time that prisoner is isolated from the general prison population and questioned about conduct occurring outside the prison regardless of the surrounding circumstances.

PARTIES TO THE PROCEEDING

The Petitioner is Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan. Petitioner was Respondent-Appellant in the United States Court of Appeals for the Sixth Circuit.

The Respondent is Randall Fields, a prisoner at the Lakeland Correctional Facility currently serving a sentence of 10-to-15 years' imprisonment as the result of his State convictions for third-degree criminal sexual conduct. Respondent was Petitioner-Appellee in the United States Court of Appeals for the Sixth Circuit.

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The Michigan Supreme Court decision denying application for leave to appeal, *People v. Fields*, is reported at 472 Mich. 938; 698 N.W.2d 394 (2005). Pet. App. 52a. The Michigan Court of Appeals decision affirming Fields's convictions of two counts of third-degree criminal sexual conduct is an unpublished decision filed May 6, 2004. Pet. App. 53a-62a.

JURISDICTION

The opinion of the Sixth Circuit affirming federal habeas relief was filed August 20, 2010. This Court has jurisdiction to review this petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment to the United States Constitution provides:

> No person shall be . . . compelled in any criminal case to be a witness against himself[.]

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, 104, 110 Stat. 1214, 1219, codified at 28 U.S.C. § 2254, provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

INTRODUCTION

In this habeas case, the Sixth Circuit has created a new "bright-line" test for questioning prisoners under *Miranda*. Now, whenever a suspect who is incarcerated is questioned away from the general prison population about conduct that occurred outside the prison, the *Miranda* warnings must be given regardless of the surrounding circumstances or whether the coercive pressures that *Miranda* was crafted to protect against are present. Pet. App. 7a-13a.

Rather than acknowledging this as a new rule, the Sixth Circuit instead declares its approach was clearly established by this Court 42 years ago in *United States v. Mathis*.[1] Applying its new rule, the Sixth Circuit has now granted habeas relief to State prisoners in Michigan and Ohio because the State courts determined that the *Miranda* warnings were not necessary after considering the circumstances surrounding the questioning.

The State of Michigan asks this Court to grant certiorari and reverse for three reasons.

First, *Mathis* fails to establish such a bright-line rule. Shortly after *Miranda* was decided, the government argued that its holding should never apply to individuals serving a prison sentence for an unrelated offense because they are not being held in custody for the purposes of questioning. While *Mathis* held that *Miranda* applies to prisoners, it did not hold that *Miranda* warnings must always be given when a

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[1] *Mathis v. United States*, 391 U.S. 1 (1968).

prisoner is questioned away from the general prison population.

Second, the Sixth Circuit's decision conflicts with the decision of other Circuits on the same important matter. S. Ct. Rule 10(a). Indeed, no circuit has ever read *Mathis* as establishing such a bright-line rule. In fact, in direct conflict with this case, the Second Circuit has denied habeas relief on a similar set of facts because there is no clearly established precedent from this Court creating such a rule.

Third, habeas relief may not be granted under AEDPA unless the State court's decision was contrary to or an unreasonable application of this Court's clearly established precedent. Contrary to the express language of the statute and this Court's prior holdings, the Sixth Circuit has created a new rule and then granted habeas relief because the Michigan courts failed to apply that rule. A new rule cannot provide the basis for habeas relief.

Finally, the State of Michigan would note that the State of Ohio is similarly seeking certiorari in *Simpson v. Jackson*, 615 F.3d 421 (6th Cir. 2010), (No. 10-458), a habeas case in which the Sixth Circuit employs the same erroneous analysis of *Mathis* and erroneous application of the AEDPA standard.

STATEMENT OF THE CASE

Following a jury trial in the Lenawee County Circuit Court, Randall Fields was found guilty of two counts of third-degree criminal sexual conduct for sexual abuse of a thirteen-year-old child.[2]

A. The Facts Surrounding Fields's Confession

Lenawee County Michigan Sheriff's Deputy David Batterson received a complaint alleging that Fields had engaged in sexual conduct with a minor. At that time, Fields was serving an unrelated 45-day sentence for disorderly conduct. Therefore, Deputy Batterson went to the Sheriff's Department where Fields was being held to investigate the accusation.

Fields was escorted from his cell in the holding area to a conference room in the administrative area of the Sheriff's Department. Pet. App. 67a-69a (State hearing on admissibility of statement, June 21, 2002, pp. 6-7).[3] He was neither shackled nor handcuffed. Pet. App. 71a-72a (State hearing, p. 9). The door to the conference room was not locked and, in fact, was left open during part of the interview. Pet. App. 70a-71a (State hearing, p. 8).[4]

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[2] Mich. Comp. Laws § 750.520d.

[3] This was not an interrogation room, but a well-lit conference room containing a conference table, chair, desk, and wipe-board. Pet. App. 87a-88a (State hearing, p. 23).

[4] The majority opinion misconstrues Fields's testimony to mean that the door to the conference room was locked. Pet. App. 3a. Fields's actual testimony was that the door separating the jail from the administrative offices was locked, not the door to the conference room in which he was interviewed. Pet. App. 71a-72a (State hearing, p.9).

Upon his arrival, Fields was not given *Miranda* warnings, but was told that "I could leave whenever I wanted to." Pet. App. 70a-71a (State hearing, p. 8). Deputy Batterson informed Fields that he was investigating a criminal sexual conduct case involving the victim. Pet. App. 109a-110a (State trial, October 22, 2002, Vol. I of II, p. 94); Pet. App. 72a-73a (State hearing, p.10). Fields, who holds a bachelor's degree in psychology and a master's degree in counseling, indicated that the victim visited his house frequently and that he was like a father-figure to him. Pet. App. 110-112a (Vol. I, pp. 95-96); Pet. App. 80-82a (State hearing, pp. 17-18).

The first several hours of the interview involved a general discussion about Fields and the victim. Pet. App. 125a-126a (Vol. I, p. 107). Approximately halfway through the interview, Deputy Batterson confronted Fields with the allegations. Pet. App. 80a-81a (State hearing, p. 17). Fields denied the accusations and attempted to present a timeline of events to Deputy Batterson. Pet. App. 70a-71a, 106a (State hearing, pp. 8, 38).

According to Deputy Batterson, at one point Fields got out of his chair and began yelling at him. Deputy Batterson told Fields that he could return to his cell because he was not going to tolerate being talked to that way. Pet. App. 125a-126a (Vol. I, p. 107). Fields confirmed this incident, though he claimed Deputy Batterson told him to "sit my f---ing ass down" and that "if I didn't want to cooperate, I could leave." Pet. App. 71a, 88a-93a (State hearing, pp. 8, 24-27). Fields did not ask to return to his cell, but instead sat

back down and continued the interview. Pet. App. 125a-126a (Vol. I, p. 107); Pet. App. 92a-93a (State hearing, p. 27). Fields acknowledged that he believed a jailer would have taken him back to his cell if he had asked. Pet. App. 92a-93a (State hearing, pp. 27). After several hours, Fields admitted to engaging in oral sex with the victim and manually masturbating the victim. Pet. App. 112a-114a, 124a-126a (State hearing, pp. 97-98, 106-107).

Defense counsel filed a motion to suppress this confession, arguing that Fields was subjected to a custodial interrogation without being provided his *Miranda* warnings. At the evidentiary hearing in the State trial court, Fields claimed that he did not feel free to leave the interview despite being told that he could do so. Pet. App. 70a-72a (State hearing, pp. 8-9). He claimed that he felt intimidated by the fact the interviewing officers were armed, though he admitted that he was never threatened or assaulted in any way. Pet. App. 73a-74a, 97a-100a (State hearing, p. 11, 31-32). Ultimately, the trial court determined that Fields was not in custody for purposes of *Miranda* and therefore his statements were admissible.

B. Direct Review in the State Courts

Fields filed an appeal of right in the Michigan Court of Appeals claiming that his statements were inadmissible because he had not been given his *Miranda* warnings before questioning. Although Fields was incarcerated at the time of questioning, it was on an unrelated matter, no greater restraints were imposed in relation to the questioning, and he was repeatedly told that he was free to end the interview.

The State court reasoned that because Fields was free to return to the jail and was questioned on a matter unrelated to his incarceration, there was no obligation to provide him warnings under *Miranda*:

> Here, defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement. [Pet. App. 56a.]

The Michigan Supreme Court denied Fields's application for leave to appeal. Pet. App. 52a.

C. Habeas Review in the Federal Courts

Fields filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 claiming that his Fifth Amendment right against self-incrimination was violated. The District Court granted habeas relief, concluding that the State courts had unreasonably applied this Court's holding in *Mathis v. United States*:

> Although some federal circuit courts have restricted *Mathis*, . . . this Court is bound by clearly established federal law as determined by the Supreme Court. . . . The Supreme Court determined in *Mathis* that the petitioner was "in

> custody" and entitled to *Miranda* warnings before a federal agent interrogated him about an offense unrelated to the one for which he was incarcerated. The court of appeals' decision was contrary to and an unreasonable application of *Mathis*. [Pet. App. 43a.]

As the district court noted, and as discussed further below, other courts that have considered questioning of suspects incarcerated on an unrelated matter have declined to find a bright-line rule within *Mathis* and have applied a context-specific custody analysis as traditionally used in *Miranda* cases. Therefore, the State of Michigan appealed, arguing that it was not an objectively unreasonable application of clearly established federal law for the State courts to also interpret *Mathis* in this way.

The Sixth Circuit affirmed, but used a different rationale. First it misinterpreted *Mathis*, imputing a bright-line test that is far broader in scope than the language of *Mathis* permits. It then concluded that the Michigan court's adjudication was *contrary to Mathis*:

> The central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison.

* * *

> The critical issue in this inquiry becomes whether the prisoner is isolated from the general prison population for questioning.
>
> * * *
>
> *This bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population. [Pet. App. 10a, 19a, 20a (emphasis added).]

Writing separately, Judge McKeague indicated his disagreement with the majority, but was bound by the Sixth Circuit's decision in *Simpson*, 615 F.3d at 421, issued only weeks before this opinion:

> In particular, in contrast to the majority and *Simpson*, I do not believe that *Mathis* obviates the need for the context-specific custody analysis clearly established by *Miranda* and its progeny. Moreover, I do not agree with the majority that *Mathis* established a bright line test to the effect that, "[a] Miranda warning *must* be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." [Pet. App. 22a.]

The State of Michigan now petitions this Court for certiorari because the Sixth Circuit's opinion: (1) is

contrary to this Court's clearly established precedent; (2) creates a conflict with decisions of other circuits on the same important matter; and (3) fails to properly apply the AEDPA standard of review.

REASONS FOR GRANTING THE PETITION

I. This Court's clearly established precedent does not hold that *Miranda* warnings are automatically required any time a prisoner is questioned away from the general prison population.

In *Miranda v. Arizona*, this Court held that the Fifth Amendment privilege against self-incrimination also protects individuals from the "informal compulsion exerted by law-enforcement officers during in-custody questioning."[5] Accordingly, once in custody, a suspect must be advised of certain rights prior to questioning.[6] Unless these rights are knowingly, intelligently, and voluntarily waived, any incriminating responses to police-initiated questioning are inadmissible.[7]

The procedural safeguards outlined in *Miranda* are only required where the suspect is "in custody."[8] The test for determining whether a person is in custody for purposes of *Miranda* is context-specific: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt that he or she was not at liberty to terminate the interrogation and leave."[9] A reviewing court "must examine all of the circumstances surrounding the interrogation," and the initial custody

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[5] *Miranda v. Arizona*, 384 U.S. 436, 464 (1966).

[6] *Miranda*, 384 U.S. at 478.

[7] *Miranda*, 384 U.S. at 478.

[8] *See Rhode Island v. Innis*, 446 U.S. 291, 300 (1980); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977).

[9] *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

determination depends on the objective circumstances rather than the subjective beliefs of the suspect.[10]

In *Mathis v. United States*, this Court addressed whether *Miranda* warnings apply to a suspect who was incarcerated on an unrelated matter.[11] The defendant in *Mathis* was interviewed by an I.R.S. agent regarding information in his tax returns. He was not advised that his answers could form the basis of a criminal prosecution nor given the *Miranda* warnings. Based in part on his incriminating statements, the defendant was subsequently convicted of criminal tax violations. On appeal, the defendant argued that admission of his statements violated *Miranda*. This Court agreed and reversed, holding the defendant was entitled to *Miranda* warnings.

Critically, however, neither the government nor the defendant challenged whether the defendant was in custody within the meaning of *Miranda* during his interview with the I.R.S. agent. Rather, the government argued that *Miranda* should not apply at all to suspects incarcerated on an unrelated matter because they were not being held for the purpose of questioning. In rejecting this argument, this Court explained that prisoners were also given the protections of *Miranda*:

> The Government also seeks to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is "in custody" in connection with the very

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[10] *Stansbury v. California*, 511 U.S. 318, 322 (1994).

[11] *Mathis*, 391 U.S. at 1.

> case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights. We find nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody.[12]

Thus, in a case where custody was conceded, the Court declined to curtail the application of *Miranda* to prisoners. Nothing in *Mathis*, however, provides any greater protection to prisoners nor sets forth any new test for determining custody.

Nevertheless, in the present case the Sixth Circuit erroneously concluded that *Mathis* forecloses the fact-specific custody analysis traditionally used in *Miranda* cases. The Sixth Circuit was simply wrong when it held: "The central holding of *Mathis* is that a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated . . . about conduct occurring outside of the prison." Pet. App. 10a. Using this mistaken analysis, the Sixth Circuit erroneously concluded that it was contrary to clearly established federal law, Pet. App. 10a-14a, 20a, even though the Michigan courts looked to the circumstances surrounding Fields's interview in determining that the

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[12] *Mathis*, 391 U.S. at 4-5.

Miranda warnings were not required – Fields was told he was free to leave at any time. Pet. App. 56a.

Mathis does not establish such a bright-line rule. Rather, as the concurring opinion in the Sixth Circuit correctly observes, *Mathis* simply involved the government's claim that *Miranda* should not apply to prisoners. Pet. App. 22a-23a. *Mathis* rejected that argument but this Court did not establish a bright-line rule that prisoners are always "in custody" for *Miranda* purposes and that *Miranda* warnings are mandated anytime a prisoner is questioned away from the general prison population. Indeed, there is nothing in *Mathis* to suggest the rather peculiar conclusion that prisoners would have greater protection under *Miranda* than the general public.[13]

In support of its broad interpretation of *Mathis*, the Sixth Circuit relied on this Court's recent decision *Maryland v. Shatzer*.[14] The issue in *Shatzer* was whether a lapse in custody of more than two years was sufficient to vitiate a suspect's invocation of his right to counsel during questioning.[15] While not a *Miranda* case, part of the analysis was whether the suspect was in custody. And in that regard, this Court noted that "no one questions that Shatzer was in custody for *Miranda* purposes[.]"[16]

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[13] Citizens are routinely questioned at a police station rather than on the street. Though no longer in the general population, there has never been a bright-line rule that such questioning always amounts to a custodial interrogation without any consideration of the surrounding circumstances.

[14] *Maryland v. Shatzer*, __ U.S. __; 130 S. Ct. 1213 (2010).

[15] *Shatzer*, 130 S. Ct. at 1217.

[16] *Shatzer*, 130 S. Ct. at 1224.

Relying on this lack of dispute over custody, the Sixth Circuit in this case erroneously concluded that the "unambiguous conclusion" in *Shatzer* is that a suspect is in custody for purposes of *Miranda* any time he is removed from his normal life in prison and taken to an isolated area or conference room. Pet. App. 10a, 18a ("a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated").

But as the Sixth Circuit concurring opinion correctly points out, just as in *Mathis*, the fact that custody was not at issue in *Shatzer* does not establish that there is clear precedent holding that *Miranda* warnings are required anytime a prisoner is questioned away from the general prison population.[17] Pet. App. 23a.

In fact, far from supporting the majority's view, *Shatzer* underscores its error. First, rather than recognizing a clearly established rule that a prisoner is entitled to *Miranda* warnings when questioned outside of the general prison population, this Court stated that "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have

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[17] Even assuming that *Shatzer* does establish such a bright-line rule, habeas relief would still be inappropriate because it was decided after this case became final and cannot be retroactively applied. *See Teague v. Lane*, 489 U.S. 288 (1988). *Mathis* was the existing precedent at the time of the decision and no court has culled this bright-line rule from its holding.

indeed explicitly declined to address the issue."[18] An open question cannot form the basis of clearly established federal law for purposes of AEDPA.[19]

Moreover, *Shatzer* goes on to explain that the issue of whether incarceration amounts to custody for purposes of *Miranda* "depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against."[20] Rather than recognizing any bright-line rule, the Court reiterated that *Miranda* is driven by its purpose requiring a fact-specific analysis:

> Our cases make clear, however, that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody. We have declined to accord it "talismanic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated."[21]

The purpose of *Miranda* is to protect against the inherent coercive pressure created by custody.[22] Where the suspect is already incarcerated, however, much of

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[18] *Shatzer*, 130 S. Ct. at 1224. *See also Illinois v. Perkins*, 496 U.S. 292, 299 (1990)("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here").

[19] *See Wright v. VanPatten*, 552 U.S. 120, 125 (2008); *Carey v. Musladin*, 549 U.S. 70, 76 (2006).

[20] *Shatzer*, 130 S. Ct. at 1224.

[21] *Shatzer*, 130 S. Ct. at 1224.

[22] *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

the inherent pressure (armed officers, shackles, bars, and restriction on movement) is routine. A prisoner is also aware that he is being held pursuant to a conviction, not an external police investigation. Absent some other form of coercion such as imposing greater restrictions, a prisoner understands that refusing to cooperate with an external investigation simply means remaining in routine custody until the end of the prisoner's sentence. While easy to administer, a bright-line rule basing custody solely on where the prisoner is questioned without regard to any additional coercive pressure does not serve the purposes of *Miranda*.[23]

Indeed, shortly after *Shatzer* was decided, Justice Souter wrote for the First Circuit in denying a defendant's claim that incarceration automatically equals custody for *Miranda* purposes.[24] Writing for that court, Justice Souter explained that the restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody."[25] In fact, Justice Souter relied on the discussion in *Shatzer* to reject reading *Mathis* as having created a bright-line rule:

> [In *Mathis*, the] Court acknowledged *Miranda*'s applicability to questioning "'when an individual is taken into custody

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[23] Unlike television portrayals, many prison cells are completely enclosed and do not have an open barred wall facing the general population. Questioning a prisoner in an open conference room is arguably less coercive than several officers questioning the prisoner in a small enclosed cell.

[24] *United States v. Ellison*, Case No. 09-1234, 2010 U.S. App. LEXIS 7814 (1st Cir. Apr. 15, 2010).

[25] *Ellison*, at *6.

> or otherwise deprived of his freedom by the authorities in any significant way,'" *id.* at 5 (quoting 384 U.S. at 478), but did not say whether the interview with Mathis fell within *Miranda* because of his incarceration or because of some other deprivation that was significant in the circumstances. Although it did not address *Mathis*, the Court's opinion in *Shatzer* forecloses Ellison's reading of the case for the former proposition.[26]

The limited application of *Mathis* is apparent if not from the opinion itself, then certainly from this Court's repeated and express observation that it has never established the parameters of custody under *Miranda* in the prison setting.

II. The Sixth Circuit's interpretation of *Mathis* creates a split among the circuits.

Mathis was decided 42 years ago. Since then, no other circuit has interpreted its holding to create the bright-line rule now adopted by the Sixth Circuit. In fact, in a materially indistinguishable case, the Second Circuit in *Georgison v. Donelli* held exactly the opposite,[27] denying habeas relief because there is no clearly established Supreme Court precedent creating a per se rule.

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[26] *Ellison*, at *7.

[27] *Georgison v. Donelli*, 588 F.3d 145 (2d Cir. 2009).

A. The Sixth Circuit's decision directly conflicts with a decision from the Second Circuit in *Georgison*.

As in this case, the defendant in *Georgison v. Donelli* was incarcerated for an unrelated offense when he was taken to a visitor's room for an interview with the police.[28] He was not given his *Miranda* warnings, but was asked if he was willing to speak with the officers. During that interview, he was confronted with an accusation regarding an assault and he made several incriminating statements.

The defendant claimed that his statements should have been excluded because he was not given the *Miranda* warnings prior to questioning. On direct review, the State courts denied this claim reasoning that he was not in custody for purposes of *Miranda* because no greater restrictions were placed on his freedom over and above ordinary prison confinement.[29]

On habeas review, the defendant claimed that the State courts' decision was contrary to *Mathis* – the same basis upon which habeas relief was granted in this case. Unlike this case, however, the Second Circuit denied habeas relief under AEDPA, finding no bright-line rule in this Court's precedent. "Because the per se rule urged by Georgison is not clearly established

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[28] *Georgison*, 588 F.3d at 150.

[29] *Georgison*, 588 F.3d at 152.

federal law, the state courts here did not unreasonably decline to apply it."[30]

As discussed above, the purpose of *Miranda* is to guard against the inherent coercive force of custody, not to impose pro forma procedures where no such pressure exists. Rather than reading a bright-line rule into *Mathis*, the Second Circuit concluded that "the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here."[31] In reaching this conclusion, the court engaged in the fact-specific custody analysis traditionally used in *Miranda* cases:

> There was no "measure of compulsion above and beyond that inherent in custody itself," *Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980), and Georgison was not "subjected to restraints comparable to those associated with a formal arrest," [*Berkemer v. McCarty*, 468 U.S. 420, 441 (1984).] There was no coercive pressure that tended to undermine Georgison's will or to compel him to speak. This is supported by the fact that Georgison felt free to refuse to answer questions and to end the interview of his own volition. It is also apparent that Georgison left the

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[30] *Georgison*, 588 F.3d at 156, citing *Musladin*, 549 U.S. at 77. The Second Circuit even noted that since 1987, "the Supreme Court has cast serious doubt on the existence of a per se or bright-line rule that would require *Miranda* warnings in the prison setting. *Georgison*, 588 F.3d at 156.

[31] *Georgison*, 588 F.3d at 157.

> visiting room at a time and in a manner of his choosing, demonstrating that he knew he was "at liberty to terminate the interrogation and leave." See [*Thompson v. Keohane*, 516 U.S. 99, 112 (1995).] At no time was Georgison restrained during questioning, which took place in a visitors' room and not in a cell or interrogation room which might be capable of a more profound custodial atmosphere.[32]

Thus, in direct conflict with the present case, *Georgison* concludes that *Mathis* does not clearly establish a bright-line rule for determining custody, and instead applies the fact-specific custody analysis traditionally used in *Miranda* cases.

B. No other Circuit has interpreted *Mathis* to establish the bright-line rule adopted by the Sixth Circuit.

Moreover, a review of the other circuits that have examined *Miranda* as it applies to incarcerated prisoners demonstrates that the Sixth Circuit's decision conflicts with the decisions of the other circuits.

In *Cervantes v. Walker*, a habeas case from the Ninth Circuit, officers found marijuana during a routine search of a prisoner's belongings.[33] A sheriff's deputy took the box of marijuana to the prisoner

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[32] *Georgison*, 588 F.3d at 157.

[33] *Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978).

sitting in the prison library and asked, "What's this?" to which the prisoner replied, "That's grass, man."[34] He was subsequently convicted of possessing marijuana.

The prisoner sought habeas relief, arguing that his status as an inmate combined with the deputy's questions amounted to custodial interrogation entitling him to the *Miranda* warnings. The Ninth Circuit disagreed, holding that under the circumstances, *Miranda* warnings were not required. First, the court rejected the argument that *Mathis* creates a per se rule requiring *Miranda* warnings. Such an interpretation "would not only be inconsistent with *Miranda* but would torture it to the illogical position of providing greater protection to a prisoner than to his non-imprisoned counterpart."[35]

Having rejected a per se rule, the Ninth Circuit turned to what the appropriate inquiry should be. After all, the traditional test of whether a person would feel free to leave does not fit with a prison setting where prisoners would arguably never feel free to leave. Beginning with the concept of restriction on movement, the court reasoned that the level of increased restrictions placed on a prisoner provides an appropriate framework for determining *Miranda* custody in a prison setting:

> The concept of "restriction" is significant in the prison setting, for it implies the need for a showing that the officers have

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[34] *Cervantes*. 589 F.2d at 427.

[35] *Cervantes*, 589 F.2d at 427.

> in some way acted upon the defendant so as to have "deprived [him] of his freedom of action in any significant way." . . . In the prison situation, this necessarily implies a change in the surroundings of the prisoner which results in an added imposition on his freedom of movement. Thus, restriction is a relative concept, one not determined exclusively by lack of freedom to leave. Rather, we look to some act which places further limitations on the prisoner.[36]

Thus, the Ninth Circuit reconciled *Miranda* and *Mathis* by framing the analysis as the extent to which a reasonable prisoner would believe his freedom of movement had been further diminished.[37] In this regard, the court identified four factors to consider: (1) the language used to summon the prisoner; (2) physical surroundings of the interrogation; (3) the extent to which officials confront the individual with evidence of guilt; and (4) whether officials exerted any additional pressure to detain the individual.[38] Applying these factors to Cervantes's case, the court determined that *Miranda* warnings were not required.[39]

Similarly, in *United States v. Conley*, a Fourth Circuit case, an incarcerated defendant was questioned

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[36] *Cervantes*, 589 F.2d at 428 (citation omitted).

[37] *Cervantes*, 589 F.2d at 429. *See also United States v. Turner*, 28 F.3d 981, 983 (9th Cir. 1994)("to determine whether *Miranda* warnings were necessary in a prison setting, 'we look to some act which places further limitations on the prisoner'").

[38] *Cervantes*, 589 F.2d at 428.

[39] *Cervantes*, 589 F.2d at 429.

about the death of another prisoner while awaiting medical treatment.[40] He was subsequently convicted of murder and claimed that his statements were inadmissible because he had not been given *Miranda* warnings prior to questioning. In rejecting this claim, the Fourth Circuit stated that an inmate is not entitled to *Miranda* warnings "merely by virtue of his prisoner status" and interpreted the clear holding of *Mathis* to apply the *Miranda* analysis to prisoners rather than to create any bright-line rule regarding custody.[41] As in *Cervantes*, the court reasoned that the freedom-of-movement test does not serve the purposes of *Miranda* in the prison setting:

> A rational inmate will always accurately perceive that his ultimate freedom of movement is absolutely restrained and that he is never at liberty to leave an interview conducted by prison or other government officials. Evaluation of prisoner interrogations in traditional freedom-to-depart terms would be tantamount to a *per se* finding of "custody," a result we refuse to read into the *Mathis* decision.[42]

Finding the analysis in *Cervantes* persuasive, the Fourth Circuit engaged in an analysis of the circumstances surrounding the questioning and ultimately concluded the defendant was not subject to

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[40] *United States v. Conley*, 779 F.2d 970 (4th Cir. 1985).

[41] *Conley*, 779 F.2d at 972.

[42] *Conley*, 779 at 973.

greater restriction amounting to "custody" for purposes of *Miranda*.[43]

This reasoning in *Cervantes* and *Conley* has been the general understanding of *Mathis* among the circuits.

For example, in *United States v. Menzer*, a Seventh Circuit case, the defendant claimed that his statements to officers during an interview in the administrative area of the prison were inadmissible under *Mathis* as he had not been given the *Miranda* warnings.[44] Rather than finding a bright-line rule in *Mathis*, the Seventh Circuit concluded the defendant was not in custody under the totality of the circumstances because there was no added imposition on his freedom of movement nor any measure of compulsion above and beyond imprisonment.[45]

Likewise, in *United States v. Scalf*, the Tenth Circuit concluded that the district court did not err in applying the test in *Cervantes* in examining whether *Miranda* was required to a prisoner who was questioned while incarcerated.[46] And in *Garcia v. Singletary*, the Eleventh Circuit concluded that "[a]fter reviewing the relevant law, we find the reasoning employed in *Cervantes* and *Conley* highly persuasive."[47]

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[43] *Conley*, 779 F.2d 974.

[44] *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994).

[45] *Menzer*, 29 F.3d at 1232.

[46] *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984).

[47] *Garcia v. Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994).

No circuit other than the Sixth Circuit has interpreted *Mathis* to establish a bright-line rule requiring the provision of the *Miranda* warnings before interrogating an incarcerated person.[48] In fact, prior to *Simpson* and this decision, the Sixth Circuit in *United States v. Ozuna* acknowledged that "prisoners are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been 'a restriction of [the prisoner's] freedom over and above that of his normal prisoner setting.'"[49] In *Ozuna*, the defendant was returned to U.S. customs after being denied entry into Canada. He was questioned for over an hour about his citizenship and itinerary during which he made several incriminating statements. The Sixth Circuit concluded that *Miranda* warnings were not required, however, because the defendant was not in custody for purposes of *Miranda*. Like prisoners, the court reasoned, there is an expected restraint on freedom associated with travel to another country that does not in itself automatically amount to custody.[50]

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[48] *See United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988) although the defendant was a prisoner and not free to leave the facility, "there was nothing in the circumstances that suggested any measure of compulsion above and beyond that confinement"); *Alston v. Redman*, 34 F.3d 1237, 1245 (3d Cir. 1994)("while *Miranda* may apply to one who is in custody for an offense unrelated to the interrogation, incarceration does not *ipso facto* render an interrogation custodial"); *Leviston v. Black*, 843 F.2d 302, 304 (8th Cir. 1988)("[w]hile *Miranda* may apply to one who is in custody for an offense unrelated to the interrogation . . . incarceration does not *ipso facto* render an interrogation custodial").

[49] *United States v. Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999), citing *Cervantes*, 589 F.2d at 428.

[50] *Ozuna*, 170 F.3d at 658-659.

Here, the majority opinion dismisses all of these cases as factually distinct. Pet. App. 11a-12a6. But this truly misses the point. While these cases are not binding on the State courts, they are highly relevant to a determination of what constitutes clearly established federal law. Where no other circuit has interpreted *Mathis* to establish the bright-line rule now created by the Sixth Circuit, it simply cannot be the case that the State courts were "objectively unreasonable" for failing to do so.

III. Rather than applying the clearly established precedent of this Court as required by the AEDPA, the Sixth Circuit has created a new constitutional rule on collateral review.

Only "clearly established Federal law, as determined by the Supreme Court of the United States" may form the basis for a grant of habeas relief to a State prisoner under 28 U.S.C. § 2254(d)(1).[51] A federal habeas court "operates within the bounds of comity and finality if it applies a rule 'dictated by precedent existing at the time the defendant's conviction became final.'"[52] A rule that "'breaks new ground or imposes a new obligation on the States or the Federal Government' falls outside this universe of federal law."[53] And such is the case here.

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[51] *Williams v. Taylor*, 529 U.S. 362, 379 (2000).

[52] *Williams*, 529 U.S. at 381, quoting *Teague*, 489 U.S. at 301.

[53] *Williams*, 529 U.S. at 381. *See also Knowles v. Mirzayance*, 129 S. Ct. 1411, 1419 (U.S. 2009)("it is not 'an unreasonable application of clearly established Federal law' for a state court to decline to apply a specific legal rule that has not been squarely established by this Court"); *Wright*, 552 U.S. at 125; *Musladin*, 549 U.S. at 76-77.

Contrary to the Sixth Circuit decision, neither *Mathis* nor *Shatzer* stand for the proposition that "[a] *Miranda* warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Pet. App. 10a. No case from this Court has ever established such a rule. Nor does the majority opinion identify any other circuit that has interpreted *Mathis* or *Shatzer* in this way. The only case with such a holding is *Simpson*, 615 F.3d at 421, a decision released by the Sixth Circuit a few weeks before the present one.[54]

On the other hand, the numerous cases cited by the State demonstrate that other circuits have not read *Mathis* to eliminate the context-specific custody analysis traditionally used in *Miranda* cases. While these cases are not binding on the State courts, they demonstrate that it was not an objectively unreasonable application of clearly established federal law for the State courts to consider the totality of the circumstances surrounding Fields's confession.[55]

Rather than addressing the difficult question of how it could be objectively unreasonable for the State courts to apply the same reasoning as so many other

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[54] The State of Ohio has filed a petition for certiorari in *Simpson*. Case No. 10-458.

[55] While the majority is correct that clearly established Federal law is limited to the holdings of this Court, Pet. App. 7a, the reasoning employed by courts of appeal are persuasive on the issue of whether a State court's decision was contrary to or an unreasonable application of this Court's precedent. *See Price v. Vincent*, 538 U.S. 634, 643 n2 (2003).

courts, the majority simply declares the State court adjudication "contrary to" its interpretation of *Mathis*. Pet. App. 7a.

A State court's adjudication is contrary to clearly established federal law if it arrives at a conclusion opposite to that of the Supreme Court on a question of law or decides a case differently on a set of materially indistinguishable facts.[56] Here, the majority found "the material facts in this case are indistinguishable from *Mathis*." Pet. App. 11a. Because custody was not at issue in *Mathis*, however, only a general recitation of events was provided. To read the general background of any case as setting forth a binding factual paradigm under which other cases are automatically decided would, as in this case, erroneously lead to the creation of numerous unintended bright-line rules.

Moreover, the facts in this case are quite distinct from *Mathis*. The interviewed prisoner in this case was not only highly-educated and familiar with the criminal justice system, he was aware that a criminal matter was being investigated and was repeatedly told that he could leave the interview whenever he wished. Further, unlike *Mathis*, Fields began yelling at the Deputy during the interview and was warned that if he did not calm down he would be returned to his cell. Instead of returning to his cell, Fields sat back down and voluntarily continued the interview – and that was before his confession. Pet. App. 125a-126a (Vol. I, p. 107); Pet. App. 70a, 88a-93a (State hearing, pp. 8, 24-27).

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[56] *Williams*, 529 U.S. at 413.

This is not a case in which the State courts ruled differently than this Court on a set of materially indistinguishable facts. Rather, it is a case in which the Sixth Circuit has improperly used habeas review as a vehicle for creating a new rule. Indeed, the majority even sets forth policy prospectively supporting the adopting such a rule:

> This *bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation away from the general prison population. Furthermore, law-enforcement officials will have clearer guidance for when they must administer Miranda warnings prior to a prison interrogation. [Pet. App. 20a (emphasis added).]

Mathis was decided in 1968. If, as the Sixth Circuit suggests, this bright-line approach has been clearly established federal law for the last 42 years, there would be no need to extol the virtues of what this approach "will" be.[57]

A bright-line rule such as that created by the Sixth Circuit is not the clearly established precedent of

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[57] The issue in this case is what clearly established Federal law is, not what it should be. Nonetheless, the rule suggested by the Sixth Circuit does not serve the purposes of *Miranda* particularly well. The "bright line" established by the majority is one of physical location, as if coercive pressure cannot be exerted within a prisoner's cell but is always present outside the general prison population. Courts are not relieved of context-specific inquiries into questioning within a cell, and are presented with a fertile ground for new litigation: what constitutes the general population.

this Court and, therefore, cannot serve as the basis for granting federal habeas relief under AEDPA. It was neither contrary to nor an unreasonable application of this Court's clearly established precedent to engage in the traditional *Miranda* analysis rather than applying the bright-line rule adopted by the Sixth Circuit. Accordingly, the State of Michigan requests that this Court grant certiorari and reverse.

CONCLUSION

WHEREFORE, the State of Michigan requests that this Court grant certiorari, reverse the Sixth Circuit, and hold that Respondent Fields was not subject to custodial interrogation, that *Miranda* warnings were not required, and therefore his statements were properly admitted.

Alternatively, the State of Michigan requests this petition be held pending the resolution of the State of Ohio's petition in *Simpson v. Jackson*, 615 F.3d 421 (2010); Case No. 10-458.

Respectfully submitted,

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Dated: November 2010

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 09-1215

RANDALL LEE FIELDS,
Petitioner - Appellee,

v.

CAROL HOWES,
Respondent - Appellant.

FILED
Aug 20, 2010
LEONARD GREEN, CLERK

Before: CLAY and McKEAGUE, Circuit Judges; POLSTER, District Judge.

JUDGMENT

On Appeal from the United States District Court for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the district court's conditional grant to Randall Lee Fields of a petition for a writ of habeas corpus under 28 U.S.C. § 2254 is hereby AFFIRMED.

ENTERED BY ORDER OF THE COURT

s/Leonard Green
Leonard Green, Clerk

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 10a0254p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RANDALL LEE FIELDS, *Petitioner-Appellee,*	)	
v.	)	No. 09-1215
CAROL HOWES, *Respondent-Appellant.*	)	

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 06-13373—Victoria A. Roberts, District Judge.

Argued: March 5, 2010

Decided and Filed: August 20, 2010

Before: CLAY and McKEAGUE, Circuit Judges;
POLSTER, District Judge.*

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*The Honorable Dan Aaron Polster, United States District Judge for the Northern District of Ohio, sitting by designation.

COUNSEL

ARGUED: Brian O. Neill, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellant. Elizabeth L. Jacobs, Detroit, Michigan, for Appellee.
ON BRIEF: Brian O. Neill, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellant. Elizabeth L. Jacobs, Detroit, Michigan, for Appellee. Randall Lee Fields, Detroit, Michigan, pro se.

POLSTER, D. J., delivered the opinion of the court, in which CLAY, J., joined. McKEAGUE, J. (pp. 16-22), delivered a separate concurring opinion.

OPINION

DAN AARON POLSTER, District Judge. Appellant appeals the district court's conditional grant of the petition of writ of habeas corpus pursuant to 28 U.S.C. §2254. The district court found that the Michigan Court of Appeals unreasonably applied established federal law in determining that a confession made by Appellee was properly admitted into evidence. For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Appellee Randall Lee Fields was incarcerated at the Lenawee County Sheriff's Department for disorderly conduct on December 23, 2001, when a corrections officer escorted him from his cell to a locked conference room in the main area of the sheriff's department. Fields was not advised of where he was being taken or for what purpose.

He was wearing an orange jumpsuit, but was not handcuffed or otherwise chained.

In the conference room, Fields was questioned by Deputy David Batterson and Deputy Dale Sharp about his relationship with Travis Bice, whom Fields had met when Bice was a minor. The questioning commenced between 7:00 p.m. and 9:00 p.m. and lasted for approximately seven hours. Fields was not read his Miranda rights but was told that if he did not want to cooperate he was free to leave the conference room at any time. Leaving the locked conference room would have taken nearly twenty minutes, as a corrections officer would have had to have been summoned to return Fields to his cell.

Fields did not ask for an attorney or to go back to his cell. However, he told the officers more than once that he did not want to speak with them anymore. At one point in the interview, Fields became angry and started yelling. Deputy Batterson testified that he told Fields he was not going to tolerate being talked to like that and that Fields was welcome to return to his cell. Additionally, Deputy Sharp testified that Deputy Batterson told Fields that if he continued to yell the interview would be terminated. Fields testified that he was told to "sit my fucking ass down" and that "if I didn't want to cooperate, I could leave." (Dist. Ct. Doc. 15 at 24.)

During the interview, Deputy Batterson told Fields that there had been allegations of a sexual nature involving Bice. Fields initially did not acknowledge any sexual relationship with Bice, but he eventually admitted to masturbating Bice and engaging in oral sex with him on at least two occasions. Prior to trial in the Lewanee County Circuit Court, the trial judge denied Fields' motion to suppress these statements. At trial, over the renewed objection of defense counsel, Deputy Batterson testified to

Fields' jailhouse admissions. Fields was ultimately convicted of two counts of third degree criminal sexual conduct and was sentenced on December 5, 2002, to a prison term of ten to fifteen years.

Fields filed an appeal of right in the Michigan Court of Appeals on three grounds. The ground relevant to the instant appeal asserted that "[t]he trial court violated Mr. Fields' due process rights by admitting his alleged custodial statement where Mr. Fields was in custody in the county jail and the Lenawee County sheriff interrogated him for as much as 7 hours without providing *Miranda* warnings." (See Dist. Ct. Doc. 35 at 2.) The Michigan Court of Appeals affirmed the trial court, holding that because Fields "was unquestionably in custody, but on a matter unrelated to the interrogation" and "was told that he was free to leave the conference room and return to his cell ... [but] never asked to leave ... Miranda warnings were not required ..." *People v. Fields*, No. 246041, 2004 WL 979732, at *2 (Mich. App. May 6, 2004). The Michigan Supreme Court denied Fields leave to appeal the Michigan Court of Appeals' decision. *People v. Fields*, 689 N.W.2d (Mich. 2004) (table).

Fields then filed a pro se petition, pursuant to 28 U.S.C. §2254, for a writ of habeas corpus on the same grounds as his direct appeal to the Michigan Court of Appeals. The district court conditionally granted Fields's habeas petition, holding that the state court unreasonably applied *Mathis v. United States*, 391 U.S. 1 (1968) and that the state court's error was not harmless. Appellant Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan, has appealed the district court's decision.

II. STANDARD OF REVIEW

The district court's grant of a writ of habeas corpus is reviewed de novo. *Miller v. Webb*, 385 F.3d 666, 671 (6th Cir. 2004). Findings of fact are reviewed for clear error unless the district court's decision is based on the transcripts from the petitioner's state court trial, in which case the findings of fact are reviewed de novo. *Wolfe v. Brigano*, 232 F.3d 499, 501 (6th Cir. 2000). Questions of law and mixed questions of law and fact are also reviewed de novo. *Ruelas v. Wolfenbarger*, 580 F.3d 403, 408 (6th Cir. 2009).

III. ANALYSIS

Appellant argues that the district court misinterpreted and erroneously applied 28 U.S.C. §2254(d) by determining that the state court adjudication was objectively unreasonable.[1]

28 U.S.C. §2254(d)(1), which is part of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), provides that:

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[1]Appellant also argues that the district court erred by providing a defendant greater federal constitutional protection in a state court than in the majority of federal circuits and in using §2254(d) to limit state jurisprudence by ruling that the state appellate court's legal conclusions must directly derive from Supreme Court holdings. These arguments are immaterial. If the state court's decision was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court, Fields is entitled to habeas relief.

> d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

28 U.S.C. §2254(d)(1).

The district court made no findings of fact because the parties agreed there were no factual disputes. Thus, we are left to examine, de novo, whether the Michigan Court of Appeals' decision was contrary to, or an unreasonable application of, clearly established federal law.

A state court decision is contrary to clearly established federal law as determined by the Supreme Court if: (1) the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law; or (2) the state court confronts a set of facts that are materially indistinguishable from a Supreme Court decision and nevertheless arrives at a result different from Supreme Court precedent. *Williams v. Taylor*, 529 U.S. 362, 406 (2000); *Thaler v. Haynes*, __ U.S. __, 130 S. Ct. 1171, 1173-74 (2010). A state court unreasonably applies clearly established federal law if the state court identifies the correct governing legal rule from the Supreme Court's cases but unreasonably applies it to the facts of the state prisoner's case. *Thaler*, 130 S. Ct. at 1173-74. A state

court's application of federal law must be "objectively unreasonable" to be an unreasonable application of federal law under §2254(d)(1). *Williams*, 529 U.S. at 409; *McDaniel v. Brown*, __ U.S. __, 130 S. Ct. 665, 673 (2010). Critically, "an unreasonable application of federal law is different from an incorrect application of federal law." *Williams*, 529 U.S. at 410 (emphasis in original); *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). Nevertheless, if the Supreme Court has not "broken sufficient legal ground to establish [a] ... constitutional principle, the lower federal courts cannot themselves establish such a principle with clarity sufficient to satisfy the AEDPA bar" under either the contrary to or unreasonable application standard. *Williams*, 529 U.S. at 381.

The Fifth Amendment provides that no person "... shall be compelled in any criminal case to be a witness against himself ..." U.S. CONST. amend. V. In *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), the Supreme Court held that this privilege against self-incrimination applies to a criminal suspect subjected to custodial interrogation. Specifically, statements taken during a custodial interrogation cannot be admitted to establish the guilt of the accused unless the accused was provided a full and effective warning of his rights at the outset of the interrogation process and knowingly, voluntarily and intelligently waived his rights. *Id.* Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.*

Miranda only applies if the suspect was (1) interrogated while (2) in custody. *See e.g.*, *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980) ("It is clear therefore that the special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody,

but rather where a suspect in custody is subjected to interrogation"). Interrogation under *Miranda* is "express questioning or its functional equivalent" that law enforcement officers "should know [is] reasonably likely to elicit an incriminating response." *Id.* at 301-02. Appellant does not dispute that the two law enforcement officials' seven hour questioning of Fields constituted an interrogation. Therefore, we must only determine whether Fields was in custody for purposes of *Miranda*.

"Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). "Although the circumstances of each case must certainly influence a determination of whether a suspect is in custody for purposes of receiving of *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Mathiason*, 429 U.S. at 495).

In *Mathis v. United States*, 391 U.S. 1 (1968), the Supreme Court held that "nothing in the Miranda opinion ... calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." While the petitioner in *Mathis* was serving time in a state prison for an unrelated conviction, an IRS agent questioned him about tax refunds he had claimed on his individual income tax returns. The agent did not read the petitioner his Miranda rights prior to obtaining documents and oral statements subsequently used to convict the petitioner of two counts of knowingly filing a false claim. At trial, the district court denied the petitioner's attempts to suppress the evidence elicited by the revenue agent. On appeal, the circuit court affirmed the district court.

The Supreme Court reversed the lower courts, finding that the petitioner was entitled to receive a Miranda warning prior to questioning by the government agent. Specifically, the Supreme Court rejected the respondent's contentions that *Miranda* did not apply because: (1) the questions asked were part of a routine civil, rather than criminal, tax investigation; and (2) the petitioner was in jail for a separate offense than that for which he was being questioned. The respondent's first contention was rejected because, as occurred with the defendant in *Mathis*, civil tax investigations frequently lead to criminal prosecutions. In rejecting the second distinction, the Supreme Court found that requiring Miranda warnings only where questioning occurs in connection with the case for which a suspect is being held in custody "goes against the whole purpose of the Miranda decision which was designed to give meaningful protection to Fifth Amendment rights." *Id.* at 4.

The central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison. In the instant case, the district court determined that the Michigan Court of Appeals unreasonably applied *Mathis* by concluding that the investigators need not have provided Miranda warnings to Fields because the interrogation was unrelated to the crime for which he was being held in custody. Though we agree with the district court's decision, we believe that the Michigan Court of Appeals' decision was contrary to, as opposed to an unreasonable application of, *Mathis*. In its opinion, the Michigan Court of Appeals explicitly stated that Fields "was unquestionably *in custody*, but on a matter unrelated to *the interrogation*," yet still concluded that Miranda warnings were not required. *People v. Fields*, No. 246041,

2004 WL 979732 at *2 (Mich. App. May 6, 2004) (emphasis added). The Michigan Court of Appeals did not cite *Mathis* nor any case relying upon *Mathis* in its decision. However, the material facts in this case are indistinguishable from *Mathis*. In both cases, the imprisoned suspect was interrogated about a matter unrelated to his offense of incarceration. Yet, while the Supreme Court in *Mathis* held that the suspect was entitled to a Miranda warning prior to interrogation, the Michigan Court of Appeals ruled that a Miranda warning was not required. The Michigan Court of Appeals therefore arrived at a conclusion contrary to clearly established federal law.

Appellant contends that federal law does not necessarily require Miranda warnings any time an incarcerated individual is questioned about a subject unrelated to the offense of incarceration. As there was no Sixth Circuit decision on point at the time of briefing,[2] Appellant cites numerous cases from other Circuits to support its position.

However, these cases are readily distinguishable from Mathis and do not provide persuasive authority to this case, which may explain why none of them were cited by the Michigan Court of Appeals. Four cases[3] involved on-

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[2]The only Sixth Circuit case cited by Appellant, *United States v. Ozuna*, 170 F.3d 654 (6th Cir. 1999), involved questioning that did not take place in prison.

[3]*Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978) (inmate questioned about marijuana discovered during standard search of belongings); *United States v. Scalf*, 725 F.2d 1272 (10th Cir. 1984) (inmate questioned in his cell immediately after stabbing another inmate); *Garcia v.*

the-scene questioning by prison officers concerning an offense committed in the jail itself. *See Miranda*, 384 U.S. at 477 ("General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding"). Five cases[4] involved voluntary confessions made by individuals who were not interrogated in isolation.[5]

Singletary, 13 F.3d 1487 (11th Cir. 1994), *cert. denied*, 513 U.S. 908 (1994) (inmate questioned after corrections officer extinguished fire in inmate's cell); *United States v. Conley*, 779 F.2d 970 (4th Cir. 1985), *cert. denied*, 479 U.S. 830 (1986) (inmate questioned in aftermath of murder of fellow inmate while waiting for medical treatment in conference room).

[4]*Flittie v. Solem*, 751 F.2d 967 (8th Cir. 1985), *cert. denied*, 479 U.S. 830 (1986) (incriminating statements made to informant visiting inmate in visitor's room of prison); *United States v. Willoughby*, 860 F.2d 15 (2d Cir. 1988), *cert. denied*, 488 U.S. 1033 (1989) (same); *Leviston v. Black*, 843 F.2d 302 (8th Cir. 1988), *cert. denied*, 488 U.S. 865 (1988) (inmate initiated police inquiry and two interviews), *United States v. Turner*, 28 F.3d 981 (9th Cir. 1994), *cert. denied*, 513 U.S. 1158 (1995) (inmate called postal inspector on telephone); *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994), *cert. denied*, 513 U.S. 1002 (1994) (inmate advised that officer was coming to speak with him, questions were sent beforehand, appearance was voluntary and took place in an unlocked room with windows facing the general prison administrative area).

[5]Also inapposite is *Alston v. Redman*, 34 F.3d 1237 (3d Cir. 1994), *cert. denied*, 513 U.S. 1160 (1995), where the defendant, who while in pretrial detention signed an undelivered form letter invoking his right to counsel, was

Because Fields was removed from the general prison population for interrogation about an offense unrelated to the one for which he was incarcerated, *Mathis* is the applicable law. None of the cited appellate cases, all of which were decided subsequent to *Mathis*, erode its essential holding: Miranda warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison.

The Michigan Court of Appeals correctly determined that Fields was "unquestionably" in custody and was subject to interrogation. Fields was taken from his prison cell to a conference room without explanation. The conference room was locked. Though told that he could leave at any time, exiting the conference room was a lengthy process that required a corrections officer to be summoned. Thus, Fields faced the type of "restraint on freedom of movement" necessary to be deemed in custody. *See Mathiason*, 429 U.S. at 495. Furthermore, Fields was questioned for approximately seven hours. The subject of the questioning was his sexual relationship with a minor, which was not related to his offense of incarceration. This was assuredly an interrogation as it was express questioning that was reasonably likely to elicit an incriminating response. See *Rhode Island v. Innis*, 446 U.S. 291, 301-02 (1980).

Despite properly determining that Defendant was in custody and subject to interrogation, the Michigan erroneously concluded that "there must be some nexus

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questioned three days later at a police station after being read and then waiving his Miranda rights. It is unclear to the Court how this case supports Appellant's argument.

Between [the elements of custody and interrogation] in order for *Miranda* to apply." *Fields*, 2004 WL 979732, at *2. The Michigan Court of Appeals relied upon *People v. Honeyman*, 546 N.W.2d 719, 723 (Mich. Ct. App. 1996), which created the "nexus" test without citation to federal authority. *Fields*, 2004 WL 979732, at *2 n.3. However, *Miranda* and its progeny only require a finding of custodial interrogation; there is no nexus requirement. *See Miranda*, 384 U.S. at 444 ("the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege of self-incrimination"); *Thompson v. Keohane*, 516 U.S. 99, 104 (1995) (" ... the *Miranda* Court held, suspects interrogated while in police custody must be told they have a right to remain silent, that anything they say may be used against them in court, and that they are entitled to the presence of an attorney ...") (emphasis added). Thus, the Michigan Court of Appeals erred first by searching for a nexus between custody and interrogation and then by finding that, because Defendant was in custody "on a matter unrelated to the interrogation," Defendant wasn't "in custody for the purpose of determining whether Miranda warnings were required." *Fields*, 2004 WL 979732, at *2.

Any doubt that Fields was in Miranda custody is erased by both this Court's recent decision in *Simpson v. Jackson*, __ F.3d __, No. 08-3224, 2010 WL 2771861 (6th Cir. July 13, 2010), and the Supreme Court's opinion in *Maryland v. Shatzer*, __ U.S. __, 130 S. Ct. 1213 (2010). As an initial matter, it should be noted that although *Simpson* was argued after our case and both opinions were written concurrently, the *Simpson* decision was issued prior to this opinion. We are therefore bound by its ruling. Because *Simpson* only briefly discussed the Miranda

custodial interrogation issue, we are including a detailed explanation of our ruling.

In *Simpson*, the incarcerated appellant, on separate occasions, made incriminating statements to police officers questioning him about a crime unrelated to his offense of incarceration. The appellant was not read his Miranda rights on either occasion. The statements were then used as evidence to support criminal charges against the appellant. The appellant moved to suppress these statements at trial, but the state trial judge denied the motion and admitted his statements. The appellant was subsequently convicted. On direct appeal, the Court of Appeals of Ohio upheld the appellant's conviction. The appellant then petitioned for a writ of habeas corpus pursuant to 28 U.S.C. §2254, which was dismissed by the district court. The appellant appealed the dismissal to our court. The panel reversed the district court's dismissal and granted the appellant's petition, holding that the state court's decision was contrary to factually indistinguishable Supreme Court precedent. Specifically, the panel found "no relevant factual distinction between *Mathis* and the circumstances of [the appellant's statements]." *Simpson*, 2010 WL 2771861, at *18.

In both our case and *Simpson*, "as in *Mathis*, state agents unaffiliated with the prison isolated an inmate and questioned him about an unrelated incident without first giving Miranda warnings." *Id.* Moreover, the state court judges in both cases, without even citing *Mathis*, ruled that statements obtained from such questioning was admissible. And in both cases, the failure to heed *Mathis* and forego the issuance of Miranda warnings was

"improper" and "any resulting statements [should have been] suppressed" by the trial court. *Id.*[6]

In *Maryland v. Shatzer*, the Supreme Court found an incarcerated prisoner subjected to questioning on an unrelated crime to be in custody for Miranda purposes.[7] The *Shatzer* defendant, who was serving a sentence for an unrelated child-sexual-abuse offense, was questioned at the correctional institution by a detective on August 7, 2003, regarding allegations he had sexually abused his son. Before any questions were asked, the defendant was read his Miranda rights. Mistaking the detective for an attorney, the defendant waived his rights. However, once the detective explained he was there to question the defendant about the allegations that he abused his son, the defendant declined to speak to the detective without an attorney present and was released back into the general prison population. Approximately two-and-a-half years later, on March 2, 2006, a new detective visited the defendant, who had been transferred to a different facility, to question him about the same allegations of abusing his son. The defendant was read his Miranda rights, and a written waiver of these rights was obtained. The defendant was questioned for approximately thirty minutes in a maintenance closet. He never requested an

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[6]The panel in *Simpson* noted that the state court had relied on *Cervantes v. Walker*, *supra*, but readily distinguished that case because the prisoner was being questioned about something that happened in prison. *Simpson*, 2010 WL 2771861, at *17 n.7.

[7]Though *Shatzer* was decided subsequent to both the Michigan Court of Appeals' decision and briefing of the instant appeal, we questioned counsel about this case during oral argument.

attorney be present or referred to his prior refusal to answer questions.

Five days later, the detective returned to the correctional facility with another detective to administer a polygraph examination to the defendant. The defendant was read his Miranda rights, and a written waiver was again obtained. When the detectives began questioning the defendant, he became upset and incriminated himself by saying "I didn't force him." *Id.* at 1218. He then requested an attorney, ending the interrogation.

At trial, the defendant moved to suppress the incriminating statements made in 2006 based on his invocation of his Miranda rights in 2003. The trial court denied his motion to suppress, reasoning that there was a break in custody between 2003 and 2006, and therefore, the 2006 waiver of his Miranda rights superseded the defendant's request for an attorney in 2003. The defendant was subsequently found guilty of sexual child abuse of his son. The Court of Appeals of Maryland reversed and remanded, and the Supreme Court of the United States granted a writ of certiorari.

Holding that a break in custody of more than two weeks terminates an invocation of Miranda protections, the Supreme Court reversed the judgment of the Court of Appeals of Maryland and remanded the matter. The Court's opinion discussed whether incarceration necessarily constitutes custody, which it had "never decided ... and [had] indeed explicitly declined to address..." *Id.* at 1224. Concluding that "all forms of incarceration" satisfy the restraint on freedom of movement analysis of custody, the Court nevertheless held that "lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*" and therefore Miranda rights are not triggered

simply because an individual is incarcerated. *Id.* That is, Miranda custody requires both a restraint on movement, which is always satisfied by incarceration, and coercive pressure.

Critically for the pending appeal, the Court noted that "[n]o one questions that Shatzer was in custody for Miranda purposes during the interviews with Detective Blankenship in 2003 and Detective Hoover in 2006." *Id.* A prisoner is in custody when he is removed from his "normal life" by being taken from his cell to an isolated area, such as a closet or conference room, for the purpose of interrogation. *Id.* at 1225. Once the prisoner is then released back into the general prison population, away from his interrogators, he is no longer in custody.

Thus, faced with a factual scenario of an inmate being removed from his cell and being interrogated about an unrelated crime, the Supreme Court expressed no doubt that a Miranda warning was required. The question facing the Court was whether the inmate's 2003 invocation of his Miranda rights precluded law enforcement from soliciting a Miranda warning in 2006 and interrogating the inmate again. The Supreme Court's unambiguous conclusion that the *Shatzer* defendant was in Miranda custody on both occasions serves to bolster our determination regarding Fields.

Moreover, in finding that the defendant in *Shatzer* was in custody, the Supreme Court did not address the physical circumstances of the interrogation, such as whether the interrogation room was windowless, whether the defendant was handcuffed, whether the defendant was told he could stop the interrogation or the length of the interrogation. The Court's approach, combined with the holding in *Simpson*, provides us the necessary guidance to formalize a bright line test for determining whether

Miranda rights are triggered for an incarcerated individual. A Miranda warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison.

The critical issue in this inquiry becomes whether the prisoner is isolated from the general prison population for questioning. "Miranda ... was designed to guard against ... the 'danger of coercion [that] results from the interaction of custody and official interrogation.'" *Id.* at 1224 (citing *Illinois v. Perkins*, 496 U.S. 292, 297 (1990)) (emphasis in *Shatzer*, brackets in original). While locking doors or handcuffing the inmate enhances the potential for coercion, isolation is perhaps the most coercive aspect of custodial interrogation. Assuming the inmate is indeed undergoing interrogation, being placed in a room, apart from others within the prison population, sequesters the prisoner with his accusers in the type of scenario for which *Miranda* seeks to provide protection. *See Id.* at 1224. Moreover, "[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of that separation is assuredly dependent upon his interrogators." *Id.* at 1225 n.8 (emphasis removed from original). The sense of control exercised by interrogators over the prisoner in determining the length of the prisoner's removal from his normal life further reinforces the element of coercion. A prisoner may feel he has no choice but to cooperate and provide the exact answers his interrogators seek to elicit, regardless of the potential for incrimination. We believe a reasonable person in an inmate's position would view such interrogation conducted in isolation as coercive, thus necessitating a Miranda warning. *See Berkemer v. McCarty*, 468 U.S. 420, 442 (1984) (in determining custody, the court must assess "how a reasonable man in the suspect's situation would have understood his situation").

This bright line approach will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population. Furthermore, law-enforcement officials will have clearer guidance for when they must administer Miranda warnings prior to a prison interrogation.

The Michigan Court of Appeals' conclusion that, although Fields was in custody, interrogation without a Miranda warning was permissible because the questioning concerned an unrelated matter contradicts clearly established federal law as determined by the Supreme Court in *Mathis*. In order for habeas relief to be warranted, however, we must also determine if the admission of Fields' involuntary confession was harmless error. *Arizona v. Fulminante*, 499 U.S. 279, 308 (1991). An error that "'had substantial and injurious effect or influence in determining the jury's verdict,'" is not harmless. *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946). Even if there is only "grave doubt about whether a trial error of federal law has substantial and injurious effect or influence in determining the jury's verdict, that error is not harmless." *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation omitted). Moreover, "the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless." *Fulminante*, 499 U.S. at 296.

There is no question that the failure to suppress Fields' confession was not harmless error. In fact, Appellant has not even challenged this portion of the district court's ruling. Fields was convicted of two counts of third-degree criminal sexual conduct. As noted by the

district court, the critical evidence against Fields was his confession and the victim's testimony. The victim, however, recanted his testimony on several occasions, including telling two law enforcement officers and at least three other individuals that the sexual conduct with Petitioner never occurred. Accordingly, Fields' confession must have heavily influenced the jury's decision. The district court therefore correctly concluded that the trial court's error was not harmless and that, consequently, habeas relief was merited because the Michigan Court of Appeals' decision contradicted federal law as established by the Supreme Court.

IV. CONCLUSION

For the reasons discussed *supra*, the district court's conditional grant of the petition of writ of habeas corpus pursuant to 28 U.S.C. §2254 is hereby **AFFIRMED**.

CONCURRENCE

McKEAGUE, Circuit Judge, concurring. I agree that the outcome of this case is controlled by this court's prior decision in *Simpson v. Jackson*, No. 08-3224, 2010 WL 2771861 (6th Cir. July 13, 2010). However, I write separately because I disagree with both *Simpson's* and the majority's interpretation of two Supreme Court cases: *Mathis v. United States*, 391 U.S. 1 (1968) and *Maryland v. Shatzer*, – U.S. –, 130 S. Ct. 1213 (2010). In particular, in contrast to the majority and *Simpson*, I do not believe that *Mathis* obviates the need for the context-specific custody analysis clearly established by *Miranda* and its progeny. Moreover, I do not agree with the majority that *Mathis* established a bright line test to the effect that, "[a] Miranda warning *must* be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Majority Op. at 13 (emphasis added). Instead, applying the context-specific *Miranda* custody analysis under the deferential review mandated by AEDPA, I believe that the proper course of action in this case would be to reverse the district court and uphold the state court's determination.

I read *Mathis* as standing for a narrower proposition than does the majority. The Court in *Mathis* addressed the government's argument that it should: "narrow the scope of the Miranda holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation." 391 U.S. at 4. The Court found that there was "nothing in the Miranda opinion which call[ed] for a curtailment of the warnings to be given persons under interrogation by

officers based on the reason why the person is in custody." *Id.* at 4-5. Therefore, *Mathis* holds that *Miranda* applies to a person interrogated while in prison on charges unrelated to the investigation for which he is interrogated, but it does not establish that such a person is automatically in custody or entitled to *Miranda* warnings anytime he is interrogated away from the general prison population. Instead, this determination depends on the context–specific analysis of whether the inmate is deemed to be "in custody"; *i.e.*, whether he was subject to the sort of isolation and coercive influence that trigger the need for *Miranda* warnings.[1] Therefore, I would not read the "essential holding" of *Mathis* to be that "Miranda warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison." Majority Op. at 9.

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[1]Furthermore, while *Mathis* did find that "the courts below were wrong in permitting the introduction of petitioner's self-incriminating evidence given without warning of his right to be silent and right to counsel," the opinion does not provide the facts surrounding the interrogation. 391 U.S. at 5. Instead, it merely notes that petitioner was "interviewed" while in a penitentiary. *Id.* at 4 n.2. Clearly, applying the context-specific analysis articulated in *Miranda* and its progeny, there are circumstances in which a prisoner interrogated while incarcerated on separate charges would not be "in custody." There are also circumstances in which a prisoner would be "in custody." The facts of *Mathis*, as set forth in the opinion, simply do not provide a basis on which to draw a bright line – presumably because that was not the issue presented to the Court (the government sought to make *Miranda* applicable "only to questioning one who is

Furthermore, I also do not read *Shatzer* as broadly as does the majority here. Admittedly, *Shatzer* does state that: "[n]o one questions that Shatzer was in custody for Miranda purposes during the interviews with Detective Blankenship in 2003 and Detective Hoover in 2006." 130 S. Ct. at 1224. However, the fact that no one questioned whether *Shatzer* was in custody, does not mean (or clearly establish) that anytime an inmate is removed from the general prison population and interrogated he is "in custody" for *Miranda* purposes. Instead, it only means that the parties, unlike the government in this case, did not make an issue of the "in custody" requirement in relation to those specific interrogations.

Consequently, instead of adopting a bright line rule governing the interrogation of those already in prison and mandating that we find that Fields was in custody, I believe that the normal, context–specific analysis articulated in *Miranda* and its progeny applies here and that this analysis should determine whether Fields was in custody for *Miranda* purposes. In speaking of "custody," the language of the *Miranda* opinion indicates that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized." *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). However, as the Court's "make clear . . . the freedom-of-movement test identifies only a

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'in custody' in connection with the very case under investigation"). Therefore, I would not read the opinion as establishing the bright line rule that the majority does, especially given the Court's instructions that ""*Miranda* is to be enforced 'only in those types of situations in which the concerns that powered the decision are implicated.'" *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

necessary and not a sufficient condition for *Miranda* custody" and "*Miranda* is to be enforced 'only in those types of situations in which the concerns that powered the decision are implicated.'" *Shatzer*, 130 S. Ct. at 1224 (quoting *Berkemer*, 468 U.S. at 437). The Court noted in *Berkemer* that:

> The purposes of the safeguards prescribed by Miranda are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the inherently compelling pressures generated by the custodial setting itself, which work to undermine the individual's will to resist, and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary.

Id. at 433 (internal citations and quotations omitted). Indeed, under the *Miranda* custody test: "[t]wo discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99 (1995); *see also Yarborough v. Alvarado*, 541 U.S. 652, 663 (2004) ("Our more recent cases instruct that custody must be determined based on how a reasonable person in the suspect's situation would perceive his circumstances."); *Stansbury v. California*, 511 U.S. 318, 322-23 (1994) (per curiam) (noting that courts "must examine all of the circumstances surrounding the interrogation" and that "the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being

questioned"). Consequently, the *Miranda* custody analysis in this case is shaped by the circumstances surrounding Fields' interrogation, including the fact that Fields was already incarcerated on separate charges and, therefore, that he lived in prison. See *Shatzer*, 130 S. Ct. at 1224 (noting that "[i]nterrogated suspects who have previously been convicted of crime live in prison" and that "incarceration pursuant to a conviction" is a prisoner's "normal life" and, thereby, recognizing that the prison setting is not inherently coercive).

Turning to the particulars of this case, the Michigan Court of Appeals was the last state court to issue a reasoned opinion considering this issue. That court noted that the fact that "a defendant is in prison for an unrelated offense when being questioned does not, without more, mean that he was in custody for the purpose of determining whether Miranda warnings were required." *People v. Fields*, 2004 WL 979732, *2 (Mich. Ct. App. May 6, 2004) (citation omitted). The court also noted that:

> [D]efendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his Miranda rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

Id. Obviously or "unquestionably," Fields was in custody in the sense that he was incarcerated on a matter unrelated to the interrogation. However, this does not mean that he was "in custody" for purposes of the *Miranda* and, indeed, the Michigan Court of Appeals went on to describe the fact

that Fields would have felt free to terminate the interview and leave, which is critical to the *Miranda* custody determination. *Id.* In particular, even though Fields was interrogated in a separate conference room, he was told that he was free to leave the conference room and return to his cell; consequently, the Michigan Court of Appeals concluded that Fields was not subject to the sort of coercion necessary to trigger *Miranda* warnings because he was not in custody for purposes of *Miranda*.[2]

We view this determination under AEDPA which, to grant relief, requires that we find the state court's decision to be "contrary to, or involve[] an unreasonable application of, clearly established Federal law" as established "by the Supreme Court." 28 U.S.C. § 2254(d)(1). A state-court decision is "contrary to" clearly established federal law if: (1) the state court applies a rule that contradicts the governing law set forth by the Supreme Court in its cases, or (2) the state court confronts a set of facts that are materially indistinguishable from those presented in a Supreme Court decision and nevertheless arrives at a result different from Supreme Court precedent. *Williams*, 529 U.S. at 405-06. In order to constitute an "unreasonable application" of clearly established federal law, a state court's application of federal law to the facts of the case must be "objectively unreasonable." Id. at 409; see also *Renico v. Lett*, – U.S. –, 130 S. Ct. 1855, 1862 (2010). The Supreme Court has stressed that "the most important point is that an unreasonable application of federal law is different from an incorrect application of federal law." *Id.*

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[2]The Michigan Court of Appeals did not mention *Mathis* because it did not need to: *Mathis* merely instructed courts to apply Miranda in this context, which the Michigan Court of Appeals did.

at 410 (emphasis in original); *see also Alvarado*, 541 U.S. at 665 (conducting AEDPA review in the *Miranda* custody context and noting that: "We cannot grant relief under AEDPA by conducting our own independent inquiry into whether the state court was correct as a *de novo* matter. '[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the state-court decision applied [the law] incorrectly.'").

As discussed above, the Michigan Court of Appeals' decision has not been shown to be contrary to clearly established Supreme Court precedent. That court did not apply a rule that contradicts the governing law set forth by the Supreme Court in its cases; instead, it applied the correct, context-specific *Miranda* custody test. Nor did the Michigan Court of Appeals arrive at a result different from Supreme Court precedent on a set of facts that are materially indistinguishable from a Supreme Court decision. Furthermore, while a close call, I cannot say that the Michigan Court of Appeals' decision applying the context-specific *Miranda* custody analysis is objectively unreasonable. The Michigan Court of Appeals provided the specific factual context surrounding the investigation:

> At trial, Deputy Batterson testified that he removed defendant from his cell, where he was jailed on domestic assault, and led him to a conference room. He told defendant that he wanted to speak with him in regard to the victim whom defendant indicated he knew. The interview began around 7:00 or 9:00 p.m. and ended around midnight. Defendant was not read his Miranda rights, but Deputy Batterson told him he was free to leave the conference room and return to his jail cell.

Fields, 2004 WL 979732 at *1. As noted above, the Michigan Court of Appeals found the fact that Fields was told that he was free to leave to be critical.

It is true that Fields had to leave his cell, and was escorted through a separate door into a conference room in a separate building, and that he was questioned at length.[3] However, Fields was a prisoner. So, the fact that he had to be escorted to the conference room, and could leave and return to his cell at any time, but only with an

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[3]The parties agreed to the facts surrounding the interrogation. (R. 19 at 4-9.) In particular, in order to get to the conference room, Fields had to pass through a separate door and Fields was not told he could terminate the questioning at any time, but he was told he could leave at any time and that he would be taken back to the cell. (*Id.*; R. 20-3 at 5, 14.) Fields had to pass through the "J door," which is the door that divides the jail from the Sheriff's Department. (R. 15 at 7.) The conference room where he was interrogated was just beyond the J door. Furthermore, Fields testified that the interview began at around 8:00 p.m. or 8:30 p.m. and ended around 1:30 a.m. or 2:00 a.m.

Fields also testified that he was told at one point to "sit my fucking ass down" and that "if I didn't want to cooperate, I could leave." (R. 15 at 24.) However, this statement makes it clear that continuation of the interview was up to Fields, and it would have indicated to a reasonable person that he was free to terminate the interview and leave. Consequently, it shows the absence of the type of coercive pressures relevant to the Miranda custody inquiry. Indeed, Fields testified that he "assumed" that if he asked to go back to his cell, he would be escorted back to his cell. (R. 15 at 27.)

escort, were normal, routine features of his life as an inmate. While he did have to pass through the J-door, and the conference room was in a separate part of the building, the state court rightly noted that the fact that Fields was told he could leave at any time is of critical significance.[4] This, along with the fact that Fields was already accustomed to incarceration and its accompanying restraints, demonstrate that there were objective circumstances creating an interrogation environment in which a reasonable person, already imprisoned on separate charges, "would have felt free to terminate the interview and leave." *Alvarado*, 541 U.S. at 654-55.

In short, while the majority's bright line rule frees the courts from the task of scrutinizing individual cases to try to determine whether the suspect already incarcerated on separate charges was in custody for *Miranda* purposes, I do not believe that it is appropriate for this court to fashion such a rule under the constraints imposed by the AEDPA. Instead, we should apply the context-specific analysis articulated in *Miranda* and its progeny to determine whether Fields was "in custody." Under these circumstances, because "fair-minded jurists could disagree over whether [Fields] was in custody," the state court's decision that Fields was not in custody was not objectively unreasonable. *See id.* at 664. However, since we are bound by *Simpson*, I concur.

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[4]It also distinguishes this case from the concern in *Shatzer*, where the Court noted that, "[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of that separation is assuredly dependent upon his interrogator," because Fields controlled the duration of his stay. 130 S. Ct. at 1225 n.8.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDALL LEE FIELDS,

Petitioner, Case Number: 2:06-CV-13373

v. HON. VICTORIA A. ROBERTS

CAROL HOWES,

Respondent.
_____/

JUDGMENT

In accordance with the Opinion and Order Conditionally Granting Petition for Writ of Habeas Corpus, judgment is entered in favor of the Petitioner.

David Weaver
Clerk of the Court

By: S/Carol A. Pinegar
Deputy Court Clerk

Dated: 2/9/09

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDALL LEE FIELDS,

Petitioner, Case Number: 2:06-CV-13373
HON. VICTORIA A. ROBERTS

v.

CAROL HOWES,

Respondent.
_____/

OPINION AND ORDER CONDITIONALLY GRANTING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Randall Lee Fields is currently incarcerated at the Lakeland Correctional Facility in Coldwater, Michigan. He has filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his convictions for two counts of third-degree criminal sexual conduct. For the reasons set forth below, the Court conditionally grants the petition.

I.

Petitioner's convictions arise from the sexual assault of Travis Bice. The Michigan Court of Appeals summarized the facts adduced at trial and leading to Petitioner's convictions as follows:

> The victim testified that he met defendant when he was approximately twelve years old through defendant's nephew whom the

> victim met on a school bus. Defendant lived across the street from the victim. The victim also met James Philo, another adult, at defendant's house. After the victim started "hanging out" with defendant, Philo moved into defendant's house and the three of them spent time together watching television and sometimes pornographic films. The victim described one instance when, after consuming alcohol and smoking marijuana, the defendant and Philo went into the bedroom where defendant performed oral sex on the victim. Philo also placed his mouth on the victim's penis. The victim testified that defendant performed oral sex on him on two separate occasions. Deputy Batterson testified that while defendant was in custody on an unrelated domestic abuse matter, he was questioned about his relations with the victim. Defendant provided a statement that corroborated the victim's testimony but added that on one occasion he engaged in oral sex with Philo and the victim in a motel in Toledo, Ohio and that he masturbated the victim on two other occasions.

People v Fields, No. 246041, slip op. at 1 (Mich. Ct. App. May 6, 2004).

The Court will discuss additional relevant facts below.

II.

Following a jury trial in Lenawee County Circuit Court, Petitioner was convicted of two counts of third-

degree criminal sexual conduct. On December 5, 2002, he was sentenced to ten to fifteen years' imprisonment.

Petitioner filed an appeal of right in the Michigan Court of Appeals, raising the following claims:

I. The trial court violated Mr. Fields' due process rights by admitting his alleged custodial statement where Mr. Fields was in custody in the county jail and the Lenawee County sheriff interrogated him for as much as 7 hours without providing *Miranda* warnings.

II. Defendant was denied his due process right to a fair trial where he was on trial for criminal sexual conduct and the prosecutor elicited other acts evidence through witness testimony contrary to mre 404(b), because there was no logical relevance and it was more prejudicial than prohibitive.

III. The trial court clearly erred in finding that as a matter of law there were substantial and compelling reasons to depart from the statutory sentencing guidelines and abused it's sentencing discretion when imposing a sentence of 120 months to 180 months in prison, where the guidelines range called for a sentence of 45 to 75 months.

The Michigan Court of Appeals affirmed the convictions. *People v. Fields*, No. 246041 (Mich. Ct. App. May 6, 2004).

Petitioner filed an application for leave to appeal in the Michigan Supreme Court, raising the same claims raised in the court of appeals. The Michigan Supreme Court denied leave to appeal. *People v. Fields*, No. 126431 (Mich. Dec. 9, 2004).

Petitioner then filed the pending petition for a writ of habeas corpus. He raises the same claims raised on direct appeal in state court.

III.

A.

Petitioner's claims are reviewed against the standards established by the Antiterrorism an Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA). This Act "circumscribe[d]" the standard of review federal courts must apply when considering applications for a writ of habeas corpus raising the question of effective assistance of counsel, as well as other constitutional claims. See *Wiggins v. Smith*, 539 U.S. 510, 520 (2003).

As amended, 28 U.S.C. § 2254(d) imposes the following standard of review for habeas cases:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court

> proceedings unless the adjudication of the claim--
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Therefore, federal courts are bound by a state court's adjudication of a petitioner's claims unless the state court's decision was contrary to or involved an unreasonable application of clearly established federal law. *Franklin v. Francis*, 144 F.3d 429, 433 (6th Cir. 1998). Mere error by the state court will not justify issuance of the writ; rather, the state court's application of federal law "must have been objectively unreasonable." *Wiggins v. Smith*, 539 U.S. at 521 (quoting *Williams v. Taylor*, 529 U.S. 362, 409 (2000)) (internal quotes omitted). Additionally, this Court must presume the correctness of state court factual determinations. 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct."); see also *Austin v. Jackson*, 213 F.3d 298, 300 (6th Cir. 2000) ("All factual findings by the state court are accepted by this Court unless they are clearly erroneous.").

The United States Supreme Court has explained the proper application of the "contrary to" clause as follows:

> A state-court decision will certainly be contrary to [the Supreme Court's] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases. . . .
>
> A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [the Court's] precedent.

Williams, 529 U.S. at 405-06.

The Supreme Court held that a federal court should analyze a claim for habeas corpus relief under the "unreasonable application" clause of § 2254(d)(1) "when a state-court decision unreasonably applies the law of this Court to the facts of a prisoner's case." *Id.* at 409. The Court defined "unreasonable application" as follows:

> [A] federal habeas court making the "unreasonable application" inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable. . . .
>
> [A]n unreasonable application of federal law is different from an incorrect application of federal law. . . . Under § 2254(d)(1)'s "unreasonable application" clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly

> established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.

Id. at 409, 410-11. *See also Dorchy v. Jones*, 398 F.3d 783, 787-88 (6th Cir. 2005); *McAdoo v. Elo*, 365 F.3d 487, 493 (6th Cir. 2004); *Rockwell v. Yukins*, 341 F.3d 507, 512 (6th Cir. 2003) (en banc).

B.

In his first habeas claim, Petitioner argues that admission of his confession was improper because it was coerced. Petitioner argues that police failed to advise him of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), before interrogating him for seven hours.

Petitioner claims that his statement to police was improperly admitted at trial because it was involuntarily made. Petitioner argues that his statement was involuntary because police failed to end the interrogation when Petitioner asked to leave and Petitioner was not read his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). The trial court conducted a hearing to determine the voluntariness of Petitioner's statement to police. Following the hearing, the trial court determined that Petitioner, although in custody on another charge, was informed that he was free to leave to interrogation room and that he knew he was free to leave and could exercise that right at any time. There was no dispute that Petitioner was not informed of his *Miranda* rights.

The last state court to issue a reasoned opinion regarding this claim, the Michigan Court of Appeals, addressed this claim at length, holding, in pertinent part:

At trial, Deputy Batterson testified that he removed defendant from his cell, where he was jailed on domestic assault, and led him to a conference room. He told defendant that he wanted to speak with him in regard to the victim whom defendant indicated he knew. The interview began around 7:00 or 9:00 p.m. and ended around midnight. Defendant was not read his *Miranda* rights, but Deputy Batterson told him he was free to leave the conference room and return to his jail cell. Deputy Batterson told defendant that there had been allegations of a sexual nature involving the victim. Defendant stated that he was a fatherly figure to the victim. Although defendant did not initially acknowledge any sexual relations, he ultimately stated that he had oral sex with the victim and masturbated him. He also stated that he witnessed oral sex between the victim and Philo. He stated that this occurred in the bedroom of his home in September. He also spoke of another incident involving himself, the victim and Philo at a Toledo, Ohio motel. With regard to *Miranda*[] warnings generally, this Court has long held:

> *Miranda* warnings are necessary only when the accused is interrogated while in custody, not simply when he is the focus of an investigation. Custodial interrogation is "'questioning initiated by law enforcement officers after a person has been taken into

> custody or otherwise deprived of his freedom of action in any significant way.'" [*People v Herndon*, 246 Mich. App. 371, 395; 633 N.W.2d 376 (2001) (footnotes omitted).]

But with regard to interrogation of a defendant who is in custody on an unrelated matter, this Court has more recently held:

> "[I]n addition to the elements of 'custody' and 'interrogation,' there must be some nexus between these elements in order for Miranda to apply." That a defendant is in prison for an unrelated offense when being questioned does not, without more, mean that he was in custody for the purpose of determining whether *Miranda* warnings were required. [*Id.* at 396, quoting *People v Honeyman*, 215 Mich. App. 687, 694; 546 N.W.2d 719 (1996)].

Here, defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in

> denying defendant's motion to suppress his statement.

Fields, slip op. at 2-3.

The procedural safeguards imposed by *Miranda* are designed "to safeguard the uncounseled individual's Fifth Amendment privilege against self-incrimination . . . while in police custody." *Thompson v. Keohane*, 516 U.S. 99, 107 (1995). Custody is determined by examining whether a reasonable person in the suspect's position would believe that he or she was free to leave. *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). *See also Standbury v. California*, 511 U.S. 318, 323 (1994) ("[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.").

In *Mathis v. United States*, 391 U.S. 1 (1968), the Supreme Court discussed whether *Miranda* warnings are required when a suspect is incarcerated on an unrelated charge. An Internal Revenue agent interviewed Mathis regarding federal charges while Mathis was serving a state sentence. At the subsequent federal trial, Mathis attempted to suppress his statement to the governmental agent on the ground that the agent had not read the *Miranda* warnings to him before interrogating him. The District Court rejected this argument, and the Court of Appeals affirmed Mathis' convictions. The Supreme Court, however, held that *Miranda* called for reversal. The Government argued that *Miranda* warnings were unnecessary because Mathis was in custody on an entirely separate offense and was not placed in custody by the officer who questioned him. The Supreme Court, however, stated that this distinction was "too minor and shadowy to justify a departure from the well-considered conclusions of

Miranda with reference to warnings to be given to a person held in custody." *Id* at 4. The Supreme Court found "nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Id*. At 4-5.

> A rule that persons in prison are in custody and must be advised of their rights prior to questioning is fully consistent with the logic underlying *Miranda* and *Mathis*. *Miranda* established a prophylactic rule intended to ensure that suspects are not coerced into confessing. *See Berkemer*, 104 S. Ct. at 3147; see also *Henry*, 447 U.S. at 273-74, 100 S. Ct. at 2188. The rule was designed for situations believed to be intrinsically coercive and susceptible of abuse. *See Miranda*, 384 U.S. at 467, 86 S. Ct. at 1624 ("inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely"); *see also Minnesota v. Murphy*, 465 U.S. 420, 104 S. Ct. 1136, 1144, 79 L. Ed. 2d 409 (1984). Prison is certainly a "police dominated" surrounding that is inherently coercive. *See Berkemer*, 104 S. Ct. at 3150, 3150 n. 28. *Miranda* recognized the powerful psychological effect on a person confined, alone with his interrogator, which often induces the individual to reach for aid. 384 U.S. at 448-55, 86 S. Ct. at 1614-17. This powerful influence is certainly present when the individual is confined in prison. *See Henry*, 447 U.S. at 273-74, 100 S. Ct. at 2188. Furthermore, the coercion inherent in custodial interrogation derives in large part

> from the knowledge of the accused that he cannot escape his interrogator, and that the questioning can continue until the desired answer is obtained. *See Miranda*, 384 U.S. at 468, 86 S. Ct. at 1624; *see also Murphy*, 104 S. Ct. at 1145-46. In *Murphy*, the Court discussed the situation where "a suspect ... is painfully aware that he literally cannot escape a persistent custodial interrogator." 104 S. Ct. at 1146. It would be hard to conceive of a situation where the accused was less able to escape his interrogator than in a prison setting.

U.S. v. Cadmus, 614 F. Supp. 367, 372 (D.C. N.Y. 1985).

Although some federal circuit courts have restricted *Mathis*, *see*, *e.g.*, *Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978), this Court is bound by clearly established federal law as determined by the Supreme Court. 28 U.S.C. § 2254(d)(1); *King v. Trippett*, 192 F.3d 517, 523 n. 2 (6th Cir. 1999). The Supreme Court determined in *Mathis* that the petitioner was "in custody" and entitled to *Miranda* warnings before a federal agent interrogated him about an offense unrelated to the one for which he was incarcerated. The court of appeals' decision was contrary to and an unreasonable application of *Mathis*.

In support of his claim that *Mathis* does not require *Miranda* warnings where a prisoner is questioned regarding a crime unrelated to that for which he is incarcerated, Respondent cites a handful of cases. The two cited Sixth Circuit cases are inapposite to the pending case. First, in *United States v. Ozuna*, 170 F.3d 654 (1999), the Court of Appeals addressed whether customs inspectors should have given *Miranda* warnings prior to questioning defendant as he tried to enter the country at

the United States/Canadian border. The Court noted in dicta that in determining whether a suspect is in custody, particular attention must be paid to surrounding circumstances. *Id.* at 658, n.3. The Court noted that the Ninth Circuit Court of Appeals has held that prisoners "are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been a 'restriction of [the prisoner's] freedom over and above that of his normal prisoner setting.'" *Id.*, *quoting Cervantes v. Walker*, 589 F.2d 424, 428 (9th Cir. 1978). The Court of Appeals' citation to *Cervantes* was dicta and certainly did not and could not overrule the Supreme Court's decision in *Mathis*. Thus, while the citation to *Cervantes* indicates some disagreement with *Mathis* it is not an invitation to disregard *Mathis*.

Second, Respondent cites the Sixth Circuit's decision in *United States v. Salvo*, 133 F.3d 943 (6th Cir. 1998). In *Salvo*, the government challenged a district court's suppression of defendant's statements to FBI agents. The statements were made during a search of his residence by the agents, who did not read him his *Miranda* rights prior to taking his statement. The Court of Appeals held that the statement was not properly suppressed because the defendant was not in custody at the time he was questioned and, therefore, *Miranda* warnings were not required. In determining that defendant was not in custody, the court considered the totality of the circumstances presented. None of those circumstances is similar to those at issue here, that is, none involved a defendant who was clearly already in custody when questioned on an unrelated charge. Thus, while *Salvo* may be instructive regarding in custody determinations for non-prisoners, it does not bear upon the claim at issue in this case and does not narrow the Supreme Court's holding in *Mathis*.

Mathis clearly states that *Miranda* warnings are required when a suspect is in custody regardless of the reason why the suspect is in custody. The Michigan Court of Appeals' conclusion that investigators were not required to advise Petitioner of his *Miranda* rights because his custody was unrelated to the crime under investigation is an unreasonable application of *Mathis*. The Court's inquiry, however, does not end there. Admission of an involuntary confession is subject to harmless-error analysis. *Arizona v. Fulminante*, 499 U.S. 279, 308 (1991).

In a habeas corpus proceeding, to determine whether a constitutional trial error is harmless, a federal court must decide whether the error "'had substantial and injurious effect or influence in determining the jury's verdict.'" *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993), *quoting Kotteakos v. U.S.*, 328 U.S. 750, 776 (1946). "This standard reflects the 'presumption of finality and legality' that attaches to a conviction at the conclusion of direct review." *Calderon v. Coleman*, 525 U.S. 141, 145 (1998), *quoting Brecht*, 507 U.S. at 633. "It protects the State's sovereign interest in punishing offenders and its good-faith attempts to honor constitutional rights, . . . while ensuring that the extraordinary remedy of habeas corpus is available to those whom society has grievously wronged." *Id.* (internal quotations omitted).

If a federal judge in a habeas proceeding "is in grave doubt about whether a trial error of federal law has substantial and injurious effect or influence in determining the jury's verdict, that error is not harmless. And, the Petitioner must win." *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation omitted). The Court may not grant habeas corpus relief if it concludes that "the state court simply erred in concluding that the State's errors were harmless; rather habeas relief is appropriate only if the [state court] applied the harmless-

error review in an 'objectively unreasonable' manner." *Mitchell v. Esperanza*, 540 U.S. 12, 18 (2003).

In considering whether the admission of a coerced confession was harmless, "the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless." *Fulminante*, 499 U.S. at 296.

> A confession is like no other evidence. Indeed, "the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him . . . [T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have a profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so." *Bruton v. United States*, 391 U.S. at 139-140, 88 S. Ct. at 1630 (White, J., dissenting). . . . While some statements by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession in which the defendant discloses the motive for and means of a crime may tempt the jury to rely upon that evidence alone in reaching its decision.

Id.

In *Fulminante*, the Supreme Court held that the admission of defendant's confession was not harmless

error. Fulminante was convicted of murdering his 11-year-old stepdaughter. Police lacked any physical evidence connecting Fulminante to the crime. He was ultimately prosecuted only after authorities learned that, while incarcerated on an unrelated charge, he confessed to the killing to an inmate, Anthony Sarivola, a former police officer who was working as a paid informant for the FBI. Following his release from prison, Fulminante also confessed to Sarivola's wife. Both confessions were admitted at trial.

The Supreme Court held that the first confession was coerced. The Court further held that the admission of a coerced confession is subject to the harmless-error analysis, and, after evaluating the evidence presented, that it was not harmless error in this case. *Id.* at 306-09, 295- 302. In reaching this conclusion, the Supreme Court considered three main factors. First, absent the confessions, it was unlikely Fulminante would have been prosecuted because the physical evidence from the scene and other circumstantial evidence would have been insufficient to convict. *Id.* at 297. The prosecutor acknowledged the importance of the confession in both his opening and closing statements. Second, the jury's assessment of the reliability of Sarivola's wife's testimony regarding the second confession may have been influenced by the existence of the first, coerced confession. Absent testimony regarding the first confession, jurors may have been more skeptical of Sarivola's wife's testimony, particularly because she had a motive to lie in that both she and her husband received significant benefits for their testimony. *Id.* at 298-99. Finally, admission of the first confession led to the admission of other prejudicial evidence against Fulminante. *Id.* at 300. Based upon the foregoing, the Court concluded that the admission of Fulminante's first, coerced confession was not harmless error.

In this case, there were essentially two pieces of evidence against Petitioner: the victim's testimony and Petitioner's confession. The victim, Travis Bice's testimony, however, was far less clearly incriminating than the Michigan Court of Appeals' summary of testimony would indicate. In the time leading up to trial, Bice told at least five individuals, including two law enforcement officers, that the sexual conduct with Petitioner never occurred. During his direct examination, Bice refused to describe for the jury what he understood "oral sex" to mean. Following a brief recess, the prosecutor asked the trial court judge if her examination of Bice could resume outside the presence of the jury because she believed Bice was going to recant his testimony. The trial court judge instead recessed for lunch. Following lunch, Bice continued his testimony. At that point, Bice did not recant and, in fact, incriminated Petitioner.

Considering that a "defendant's own confession is probably the most probative and damaging evidence that can be admitted against him," *id.* at 296, that the evidence against Petitioner was far from overwhelming, and that the victim recanted his allegations several times, the Court is in "grave doubt" about whether admission of the coerced confession had "substantial and injurious effect or influence in determining the jury's verdict." *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation omitted). Accordingly, the error was not harmless and the Court grants habeas corpus relief on this claim.

C.

Petitioner next argues that the trial court erred in admitting other act evidence regarding uncharged sexual relations he had with the victim and in admitting testimony that another adult, James Philo, who lived at Petitioner's house, also engaged in sexual acts with the

victim. The Michigan Court of Appeals held that the testimony was properly admitted as part of the *res gestae* of the offenses. The court noted that the testimony demonstrated how Petitioner fostered a relationship between himself and the victim and Philo and the victim and concluded that "[t]hese acts were so blended with the crimes defendant was charged with that they incidentally explained the circumstances of those crimes." *Fields*, slip op. at 4.

The United States Supreme Court has declined to hold that the admission of similar "other acts" evidence is so extremely unfair that its admission violates fundamental conceptions of justice. *See Dowling v. United States*, 493 U.S. 342, 352-53, 110 S. Ct. 668, 674-75 (1990). Although the Supreme Court has addressed whether prior acts testimony is permissible under the Federal Rules of Evidence, *see Huddleston v. United States*, 485 U.S. 681, 108 S. Ct. 1496 (1988), it has not explicitly addressed the issue in constitutional terms. Therefore, "[t]here is no clearly established Supreme Court precedent which holds that a state violates due process by permitting propensity evidence in the form of other bad acts evidence." *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003). Consequently, there is no Supreme Court precedent that the state court decisions could be deemed "contrary to" under 28 U.S.C. § 2254(d)(1). *Id.* at 513. Petitioner's challenge to the admission of the prior bad acts evidence, therefore, does not warrant habeas relief.

D.

Finally, Petitioner argues that the trial court failed to set forth any substantial and compelling reasons for departing from the sentencing guidelines. The guidelines range was 45 to 75 months, and Petitioner was sentenced to 120 to 180 months.

Under Mich. Comp. Laws § 769.34(3), a trial court must provide substantial and compelling reasons for departing from state sentencing guidelines. "In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). Whether a sentencing court had substantial and compelling reasons for departing from the sentencing guidelines is a matter of state law. *Howard v. White*, 76 Fed. Appx. 52, 53 (6th Cir. 2003) (holding that a state court's application of sentencing guidelines is a matter of state concern only); *see also McPhail v. Renico*, 412 F. Supp. 2d 647, 656 (E.D. Mich. 2006); *Robinson v. Stegall*, 157 F. Supp. 2d 802, 823 (E.D. Mich. 2001); *Welch v. Burke*, 49 F. Supp. 2d 992, 1009 (E.D. Mich. 1999). Thus, this claim is not cognizable on federal habeas review.

IV.

The Court concludes that the Michigan Court of Appeals' decision that Petitioner's confession was properly admitted was an unreasonable application of *Mathis v. United States*, 391 U.S. 1 (1968). The Court further finds that the error was not harmless.

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus is **CONDITIONALLY GRANTED**.

Unless a date for a new trial is scheduled within ninety days, Petitioner Fields must be unconditionally released.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: February 9, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record and Randall Lee Fields by electronic means or U.S. Mail on February 9, 2009.

s/Carol A. Pinegar
Deputy Clerk

Order
Entered: December 9, 2004

Michigan Supreme Court
Lansing, Michigan

126431

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

RANDALL LEE FIELDS,
Defendant-Appellant.

SC: 126431
COA: 246041
Lenawee CC:
02-009738-FC;
02-009749-FC

/

On order of the Court, the application for leave to appeal the May 6, 2004 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

KELLY, J., would grant leave to appeal.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the court.

December 9, 2004 s/Corbin R. Davis
Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL LEE FIELDS,

Defendant-Appellant.

UNPUBLISHED
May 6, 2004

No. 246041
Lenawee Circuit Court LC No. 02-009738-FC

Before: Wilder, P.J. and Hoekstra and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of third-degree criminal sexual conduct (multiple variables), MCL 750.520d.[1] The trial court sentenced him to concurrent terms of ten to fifteen years in prison. Defendant appeals as of right his convictions and sentences. We affirm.

I. Basic Facts

The victim testified that he met defendant when he was approximately twelve years old through defendant's nephew whom the victim met on a school bus. Defendant lived across the street from the victim. The victim also met James Philo, another adult, at defendant's house. After

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[1] Defendant was charged with three counts.

the victim started "hanging out" with defendant, Philo moved into defendant's house and the three of them spent time together watching television and sometimes pornographic films. The victim described one instance when, after consuming alcohol and smoking marijuana, the defendant and Philo went into the bedroom where defendant performed oral sex on the victim. Philo also placed his mouth on the victim's penis. The victim testified that defendant performed oral sex on him on two separate occasions. Deputy Batterson testified that while defendant was in custody on an unrelated domestic abuse matter, he was questioned about his relations with the victim. Defendant provided a statement that corroborated the victim's testimony but added that on one occasion he engaged in oral sex with Philo and the victim in a motel in Toledo, Ohio and that he masturbated the victim on two other occasions.

II. Defendant's Statement

Defendant first argues that the trial court erred in admitting a statement that defendant made while jailed on an unrelated matter. We disagree.

We review a trial court's findings of fact in a suppression hearing for plain error; but we review de novo the trial court's ultimate ruling on the motion. *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). The trial court did not make any findings of fact because the parties agreed that the facts were undisputed.

At trial, Deputy Batterson testified that he removed defendant from his cell, where he was jailed on domestic assault, and led him to a conference room. He told defendant that he wanted to speak with him in regard to the victim whom defendant indicated he knew. The interview began around 7:00 or 9:00 p.m. and ended

around midnight. Defendant was not read his *Miranda* rights, but Deputy Batterson told him he was free to leave the conference room and return to his jail cell. Deputy Batterson told defendant that there had been allegations of a sexual nature involving the victim. Defendant stated that he was a fatherly figure to the victim. Although defendant did not initially acknowledge any sexual relations, he ultimately stated that he had oral sex with the victim and masturbated him. He also stated that he witnessed oral sex between the victim and Philo. He stated that this occurred in the bedroom of his home in September. He also spoke of another incident involving himself, the victim and Philo at a Toledo, Ohio motel.

With regard to *Miranda*[2] warnings generally, this Court has long held:

> *Miranda* warnings are necessary only when the accused is interrogated while in custody, not simply when he is the focus of an investigation. Custodial interrogation is "'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" [*People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001) (footnotes omitted).]

But with regard to interrogation of a defendant who is in custody on an unrelated matter, this Court has more recently held:

---

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

> "[I]n addition to the elements of 'custody' and 'interrogation,' there must be some nexus between these elements in order for *Miranda* to apply." That a defendant is in prison for an unrelated offense when being questioned does not, without more, mean that he was in custody for the purpose of determining whether *Miranda* warnings were required. [Id. at 396, quoting People v Honeyman, 215 Mich App 687, 694; 546 NW2d 719 (1996)].[3]

Here, defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

III. Other Acts

Defendant also argues that the trial court erred in admitting other acts evidence. We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Aguwa*, 245 Mich App 1, 6; 626 NW2d 176 (2001). "An abuse of discretion is found only if an unprejudiced person, considering the facts

---

[3] On appeal, defendant suggests that these cases hold no precedential value because this Court reached its decision in *Honeyman* "without citation to authority" and "created the 'nexus' theory (continued...)

on which the trial court acted, would say that there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000). To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. MRE 103(a)(1); *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). A criminal defendant may obtain relief from an unpreserved error if the error is plain and affected substantial rights in that it affected the outcome of the proceedings, and it either resulted in the conviction of an innocent person or seriously affected the fairness, integrity or public reputation of the proceedings. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

Because this evidence was either objected to on a basis other than that argued on appeal or was not objected to at all, it is reviewed for plain error. Defendant objected to evidence that the victim also engaged in oral sex with Philo in defendant's presence based on relevance, not MRE 404(b). Defendant objected to evidence that he had oral sex with the victim in a hotel in Toledo, Ohio stating that the act was "outside the jurisdiction of the Court. It's more prejudicial than probative." Defendant did not object when Deputy Batterson testified that defendant masturbated the victim and engaged in oral sex with Philo. Defendant

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(...continued)

out of whole cloth." According to MCR 7.215(C)(2), "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." Moreover, one of the reasons this Court publishes opinions is if it "establishes a new rule of law." MCR 7.215(B)(1). Thus, the fact that this Court created the "nexus theory" in *Honeyman* does not cause the opinion to lack precedential effect.

also did not object when the victim testified that defendant used alcohol and marijuana with him.

There was no plain error in the admission of this evidence. The prosecution did not offer this evidence as 404(b) evidence, but rather, as part of the whole story surrounding the criminal acts for which defendant was charged. The evidence was admissible as part of the res gestae of the offenses, independent of MRE 404(b). *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996); *People v Coleman*, 210 Mich App 1, 5; 532 NW2d 885 (1995). "'Evidence of other criminal acts is admissible when so blended or connected with the crime of which [the] defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime.'" *Sholl, supra*, quoting *State v Villavicencio*, 95 Ariz 199, 201; 388 P 2d 245 (1964). Here, defendant fostered a relationship between himself and the victim as well as between Philo and the victim. The three spent time together on several occasions watching television and pornographic films. On occasion, defendant offered the victim alcohol and marijuana. It was under these circumstances and on more than one occasion that defendant had sexual relations with the victim and/or Philo had sexual relations with the victim in defendant's presence. These acts were so blended with the crimes defendant was charged with that they incidentally explained the circumstances of those crimes. Therefore, the trial court did not err in admitting this evidence.[4]

---

[4] Defendant also briefly mentions Deputy Batterson's testimony that "[Defendant] was incarcerated on an unrelated matter--." Defendant objected to this testimony and the trial court sustained the objection. The trial court instructed the jury to disregard evidence that was stricken during trial. Therefore, there was no plain error.

IV. Sentencing

Defendant also argues that the trial court erred in finding "there were substantial and compelling reasons to depart from the statutory sentencing guidelines and abused its discretion when imposing a sentence of 120 months to 180 months in prison where the guidelines range called for a sentence of 45 to 75 months."

At the sentencing hearing, the trial court stated:

> In this case since I reviewed the pre-sentence report, I reviewed your description of the offense, as I reviewed the testimony that was given, this happened so repeatedly, you took advantage of this young man with another, I think the sentencing guidelines are totally inadequate. I think that you are a danger to our youth. If you are released, I think that you will repeat. I'm convince[d] that is – that you will.

On the sentencing information report departure evaluation, the trial court wrote:

> The following aspects of this case led me to impose a sentence outside the recommended range:
>
> Repeatedly this defendant sexually abused this minor child victim and encouraged and aided another to abuse this child, all over an extended period of time.
>
> In order to enable him to do this, defendant deceived the victim's family and enticed and

took him to locations where he was separate from those who could counsel and assist him.

Defendant is a person who, when free, will repeat this criminal conduct.

Generally, upon conviction of a felony committed after January 1, 1999, a trial court must impose a sentence within the recommended range of accurately scored sentencing guidelines. MCL 769.34(1), (2); *People v Hegwood*, 465 Mich 432, 438-439; 636 NW2d 127 (2001). A trial court may depart from the guidelines recommended range only "if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure." MCL 769.34(3); *Hegwood, supra* at 439-440. "A substantial and compelling reason must be "objective and verifiable"; must "'keenly' or 'irresistibly' grab our attention"; and must be "of 'considerable worth' in deciding the length of a sentence." *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003), quoting *People v Fields*, 448 Mich 58, 62, 67; 528 NW2d 176 (1995).

MCL 769.34(3)(b) provides: "The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight."

Defendant argues that the fact that defendant "repeatedly . . . abused this minor child victim and encouraged and aided another to abuse this child, all over an extended period of time" is not a valid reason for departure because it was already taken into account by the sentencing guidelines. Although defendant's prior and concurrent offenses and his continuing pattern of criminal

behavior were taken into account in offense variable (OV) 13 concerning defendant's continuing patter of criminal behavior, the facts that defendant's relationship with the victim extended over a period of time and that defendant encouraged and/or aided Philo's abusive relationship with the victim were not taken into account. This is a substantial and compelling reason for departure because it aggravated the circumstances surrounding defendant's criminal conduct.

Defendant also argues that the fact that defendant deceived the victim's family and enticed and took him to discreet locations is also not a valid reason. Although we agree that the nature of the crime necessitates deception, the fact that defendant "enticed" the victim with alcohol and marijuana is a substantial and compelling factor that was not otherwise accounted for.

We agree with defendant that the fact that defendant is a danger to youths is not a valid factor for the purpose of departure. The youthfulness of the victim was taken into account by OV 10 concerning the vulnerability of the victim. Speculation that defendant will be a danger to other youths, although very likely the case, is not objective and verifiable. We also agree that the trial court's speculation that defendant "will repeat" is not objective and verifiable.

Keeping in mind that the trial court is entitled to some deference because of its "familiarity with the facts and its experience in sentencing, [and because] the trial court is better situated than the appellate court to determine whether a departure is warranted in a particular case," *Babcock*, *supra* at 268-269, we conclude that while some of the trial court's factors were not valid reasons for departure, others were. When a trial court provides multiple substantial and compelling reasons for

departure from the guidelines range, some of which are not substantial and compelling, our Supreme Court has instructed us to "determine whether the trial court would have departed and would have departed to the same degree on the basis of the substantial and compelling reasons alone." *Babcock*, *supra* at 260. Here, the trial court stated: "I will point out that if the appellate court decides that I was incorrect in my decision regarding the guidelines, the sentence would still be 10 to 15 years." Thus, the trial court made clear that it would depart to the same degree even if we remanded for corrections. Accordingly, we affirm defendant's sentence.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF LENAWEE

THE PEOPLE OF THE
STATE OF MICHIGAN

V

FILE NO. 02-9738-FC
02-9739-FH
02-9749-FC
02-9750-FC

RANDALL LEE FIELDS

Defendant.
_____/

MIRANDA HEARING

BEFORE THE HONORABLE TIMOTHY P. PICKARD,
CIRCUIT JUDGE

Adrian, Michigan – Friday, June 21, 2002

APPEARANCES:

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REPORTED BY: Sally L. McFeters, CSR 2317
Certified Shorthand Reporter

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Adrian, Michigan

Friday, June 21, 2002 - 8:40 a.m.

PROCEEDINGS

THE COURT: Miss Schaedler and Miss Tate?

MS. SCHAEDLER: Yes, your Honor.

THE COURT: People versus Fields.

MS. SCHAEDLER: Ready.

THE COURT: This is the date and time set for a Miranda hearing. I guess I do have a question here, and that is: Does this hearing apply to all the files here, or does this just apply to one particular file, or --

MS. TATE: To all files, your Honor.

THE COURT: To all files? Okay. Thank you. Miss Tate, you're the one who filed the motion. You're asking that this, that the bind-over be quashed and that certain statements be suppressed. Is that correct?

MS. TATE: That is correct, your Honor.

THE COURT: All right. Do you want to --

MS. TATE: Okay. Specifically --

THE COURT: -- state your position to the Court?

MS. TATE: My position is this: My client was taken from the jail, where he was incarcerated on a

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different charge, over to the section of the Sheriff's Department that's administrative section, to a conference room. He was, at that point in time -- first of all, he was in custody when he was in jail. He was moved from --

THE COURT: What was he in jail for?

MS. TATE: What was the charge?

MS. SCHAEDLER: Disorderly conduct.

DEFENDANT FIELDS: Disorderly conduct.

MS. TATE: Disorderly conduct. It was an unrelated charge.

THE COURT: Um-hmm.

MS. TATE: He was in jail for an unrelated charge. He was taken from his cell, taken out of the jail section of the Sheriff's Department into the conference room in the administrative section of the Sheriff's Department. He was not read his Miranda rights.

The officer indicates that while he told him he could leave any time he wanted, the officer also indicated he could not just get up and leave. They would have had to have somebody come and get him to have him leave. That my client was intimidated by this process. He was the focus, and they were looking at him in investigating a crime. He should have been read his Miranda rights at that point in time. He was not.

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He gave an -- ended up giving what he determined to be an involuntary statement to Mr. Batterson. We believe the statement and everything deriving from that statement should be suppressed at this point in time, your Honor.

THE COURT: All right. Do you want to call your client to the stand then?

MS. TATE: I would call Mr. Fields to the stand --

THE COURT: All right.

MS. TATE: -- your Honor.

I believe we could probably stipulate that there was only one statement given.

MS. SCHAEDLER: Correct.

THE COURT: You want to raise your right hand, please? Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

DEFENDANT FIELDS: I do.

THE COURT: Please have a seat.

RANDALL LEE FIELDS

called by the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. TATE:

Q Would you state your full name for the record,

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Mr. Fields?

A Randall Lee Fields.

Q Mr. Fields, was there a time in December of 2001 when you were incarcerated in the Lenawee County Jail?

A Yes.

Q And I believe you indicated earlier that was for disorderly. Is that correct?

A That's correct.

Q And you would agree that that's unrelated to the charges you were charged with at this point in time. correct?

A That is correct.

Q Mr. Fields, was there a time when you came into contact with Deputy Batterson?

A Yes. December --

Q When was that?

A December the 23rd.

Q And could you describe for the court what occurred when you first came in contact with him?

A Umm --

Q Specifically, you were in your cell at the jail. What-- how did you come to come out of there?

A I came out of my cell, and I believe it was with Dusty.

Q Who's Dusty?

A Doug. I can't tell you his last name. He's a guard.

Q One of the jailers at the jail?

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A Yes. And they walked me --

Q Is that a yep, a yes, or what?

A Yes. And they walked me over to the J door on the second floor, walked me through the J door --?

Q Now, the J door, is that the door that connects -- that's the dividing line, the lock that divides between the jail and the Sheriff's Department itself?

A Yes, it is.

Q Okay. And then what happened?

A And then I went into the conference room. Okay? The guard left me at that door, and I went into the conference room with Mr. Batterson and Mr. Sharp

Q. Now, was -- this conference room, was that still part of the jail itself?

A No, it is not.

Q What floor was your cell on at the jail?

A The third floor.

Q And what floor is the J door on?

A The second floor.

Q So they had to take you out of your cell, down a floor, and over to another door?

A Yes.

Q And this conference room, is this just shortly outside of the J door.

A Yes.

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Q Okay.

A You make a right turn, and it's to the right.

Q Okay. You go down a short hall, make a right turn, turn and you're there?

A That is correct.

Q Now, was the door to the conference room open or shut during your discussions with Mr. Batterson?

A Part of the time it was open; part of the time it was shut.

Q What were your feelings when you came into that room? What was your understanding of the situation as you came, walked through the J door and came into the room?

A I was told I was being interviewed.

Q Did anyone tell you you were the focus of a criminal investigation at that point?

A No.

Q And when you got to the room, was anything said to you?

A That Mr. Batterson did say that I could get up and leave whenever I wanted to. However, when we got into a more-involved discussion, I tried to draw a

time line on the blackboard for him, showing him the events that occurred, and I was told to -- that that was not fucking important, and I needed to just take a seat, and if I did not want to cooperate, I needed to go back to my cell.

Q What were your feelings at the start of this interview as

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to whether or not you could actually freely leave that place?

A I knew that I could not freely leave. I was well aware of that.

Q Did anyone ever discuss with you what's called the Miranda rights, your right to remain silent?

A No, I was never read my Miranda rights.

Q So you are sitting here today in an orange jump suit with handcuffs and ankle cuffs and that on. Did you have those on at the time?

A I don't believe so.

Q At this -- what were your feelings as far as your freedom to leave the situation?

A There was no freedom to leave. I mean, I was trapped. I couldn't -- even if I would have gotten up and left, I wouldn't have known how to get back to the jail. The door was locked, so there was no place for me to go.

Q Okay. You said the door was open part of the time, shut part of the time. What do you mean?

A The J, the J door was locked --

Q Okay.

A -- between the jail and the Sheriff's Department, so there would have been no place for me to go.

Q Do you think Mr. -- if you tried to get -- did you believe -- in your mind at that time, did you have any

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belief as to whether or not Mr. Batterson would have allowed you to leave the room?

A I'm quite sure they would not have allowed me to leave the room.

Q Is that what you believed at the time?

A That is what I believed at the time; that is what I still believe.

Q Now, what type of questions were asked of you? Just-- you don't have to get specific, just the general nature of the questions.

A They were questions regarding a criminal sexual conduct case, and I was told -- I was never told that I was under investigation; I was told this was an interview.

Q What do you understand an interview to be?

A An interview to me would be to sit down and talk to someone.

Q For what purpose?

A To gain information. The end result of this was this was an interrogation, the way it was written up in the police report.

Q Okay. But we're trying to get your understanding of the situation at the time.

A My understanding of it was I was being interviewed. That is what I was told.

Q And what type, as what type of a situation you were being

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interviewed as?

A I was being interviewed on a CSC charge.

Q That was being leveled against you? Against someone else?

A I was never told it was leveled against me. I was never told that it was against me whatsoever.

Q Well, what was your understanding of it? Why were they talking to you?

A They were trying to gain information regarding Travis Bice and Tristen Jennings.

Q Did anyone --

A And Mr. Batterson said that I was being -- he was asking me -- told me that he had interviewed both of these boys, which later we found out was not even the case, but said that he had interviewed both of these boys, and that he wanted to talk to me about whether or not I had any involvement with these boys.

Q At any point in time, did you feel intimidated by the situation?

A Oh, very. I was intimidated through the whole thing.

Q Can you describe to the Court what made you feel intimidated?

A They both had their guns. You know? The door was locked -- or shut, then it was open. I mean, the only thing that made me feel comfortable was the fact that

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they would go get me a drink of water. But I got cotton mouth so bad because I was scared. I mean --

Q Why were you scared?

A Because I didn't have I didn't even know why I was there for sure. You know? And then I was told that they had interviewed both of these boys. Well, later we find out that one of those boys was never even interviewed.

Q Well, what you find out later is irrelevant. I want to know --

A Okay.

Q -- what you were thinking at this point in time.

A Fear. They still had their guns, both of them, Mr. Batterson and Mr. Sharp.

Q Why did their guns make you feel scared?

A Telling me I can get up and go free, but, yet, they had to have their guns. That doesn't tell me there's any freedom. I mean, you don't see an officer in the jail with a gun.

Q Had you ever been in that interview room prior to this date?

A No, never. I had never been on that side of the Sheriff's Department.

Q What were your thoughts as far as your ability to get back into the jail in a timely -- a quick, timely manner?

A I didn't have one.

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Q What do you mean, "didn't have one"?

A I didn't have a thought about it because I didn't even know where I was at.

Q You knew you had walked from the jail. Correct?

A I knew I had walked from the jail, I had walked through the J door, because the door has a "J" on it.

Q Okay.

A Okay? But to get back in there, I walked part of the way down the hall because I thought that's where I was supposed to go to get into that door, and that was not even the case.

Q When was this that you walked partway down the hall?

A When I -- when I -- on our way back, which was about 1:30 in the morning.

Q Okay. Did you feel comfortable when this questioning was going on?

A No.

Q What were your feelings while all of this was going on?

A Mr. Sharp never said much. Mr. Batterson made me feel threatened.

Q Okay. What did he do to make you feel threatened?

A Used a very sharp tone, "I've done this for many times. You can't pull the wool over my eyes. I know you're a liar." Those kinds of statements to make me feel like I was just, you know -- no matter what I said, it wasn't

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going to matter.

And then when I tried to show them on a time line what was going on, I was told to sit my ass down, it didn't fucking matter. And it was like where does this information come from? You know? If you want my information, then why aren't you willing to let me share this information?

Q All right. Was that the only time he used profanity?

A Yes.

Q Other than that, he did not use it?

A He didn't use profanity other than that one time.

Q Did you form a belief as to whether or not you had an option to talk to him or not talk to him?

A I didn't have an option. I did not feel that I had an option.

Q Why did you feel that way?

A Because I -- here I am isolated into an area where I had no idea how to get back. When I left that room, even when we left the room, I started walking down the hall much farther than what that door even was because I didn't know where I was walking to. I think it was from about 8:30 until 1:30, 2:00 in the morning before I ever got back to my cell.

Q So they came to get you somewhere around 8:30?

A Yeah, it was around eight -- it was during visiting

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hours, I know that, because they told me this is a heck of a time to be doing this, during visiting hours.

Q Who's "they"?

A Kurt, and I don't know Kurt's last name, and Dusty, and I don't know his last name.

Q Are they both jailers?

A They're both jailers, officers of the jail.

Q Okay. What did you infer from their statement that this was a heck of a time to be doing this?

A They didn't have enough staff, that it was coerced (sic) some time to be doing it. It was December the 23rd, and I think that was a weekend. I'm not real sure. If it wasn't a weekend, it was a Friday. But it was on December the 23rd that it occurred.

And then Mr. Batterson told me he would be back the next day to follow up with me to get the rest of any information to close. And then he never showed back up, and I never seen him again until January 22nd when he came to my house to arrest me.

Q At the time you were in the jail, what was your normal time you would typically go to sleep when you were in the jail at that time?

A Well, I would normally get my meds at 10:00 and normally go to bed about 11:00, 10:30.

Q So this -- so your interview ended a couple, three hours

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after you would have normally gone to sleep in your cell?

A That's correct. And I missed all my meds that I take that evening.

Q Okay. So when he had you with him, you missed your medications.

A Yes.

Q -- as well?

A Yeah, that's correct.

Q What kind of medications did you miss?

A Prograf, Cellcept, Paxil.

Q What are those for?

A. Prograf and Cellcept are anti-rejection medications because I've had a kidney transplant. Paxil is an anti-depressant. My stool softeners. I'm trying to think what else I take at night.

Q But your whole 10 o'clock dosages --

A All of my 10 o'clock meds --

Q -- of medications --

A were not given to me because, when I got back to the jail, they said it was too close to getting my 5 a.m. dose, so they would not give them to me.

MS. TATE: Okay.

Nothing further, your Honor.

THE COURT: Miss Schaedler?

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CROSS-EXAMINATION

BY MS. SCHAEDLER:

Q You indicated that you were never told what this investigation or interview was about. Is that correct?

A I was told that it was an interview to gain information regarding Travis and Tristen and if I've had any involvement with them.

Q Sexual involvement?

A Yes.

Q So you were aware that it was about your sexual involvement with people who were under the age of 16?

A I was not told that in the beginning. That was the question I was asked. I was not told that until almost halfway through the interview. I was told that both of these boys had been interviewed, which later we found out was not true.

Q Now, Mr. Fields, you have a nursing degree. Is that correct?

A That's correct.

Q You're a registered nurse?

A That is correct.

Q You have a Bachelor's Degree in Nursing?

A No, I do not. I have a Bachelor's Degree in Psychology.

Q And an Associate's Degree in Nursing?

A Nursing, that's correct.

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Q You also have a Master's Degree in Counselling?

A That is correct.

Q You're a fairly bright fellow. Is that correct?

A Okay.

Q No, is it correct or isn't it?

A I guess that would depend on who was the interpreter of that.

Q You. Aren't you a fairly bright fellow?

A Yes, I am.

Q You were charged in 1994 with four counts of assault and battery on young children that you had been taking care of and taking -- and using their Social Security money, weren't you?

A No, I was not.

Q You weren't charged with four counts of assault and battery in 1994?

A I was charged with one count of Social Security -- or one count of assault in 1994, and it was on Albert Looby (phonetical), and I did serve 30 days in jail for it.

Q Do you remember four counts that were dismissed?

A There were three counts dismissed.

Q So that would make four that you were charged with?

A I was not taking social Security money from any of them. None of those boys were on social security.

Q In nineteen --

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A So I'm not sure where you're getting your information from.

Q Sir, in 1990, were you charged with furnishing alcohol to a minor?

A Yes.

Q And did you plead to that?

A Yes.

Q And did you do time then?

A Pardon me?

Q Did you do time in jail then?

A No.

Q Did you do time in 1994 as a result of the assault --

A Thirty days.

Q And did you do time in 1998 on the trespassing charge?

A No.

Q Did you do time on the domestic assault in 2000?

A It was not caused -- charged as a domestic assault; it was charged as a disorderly conduct.

Q In 2000?

A There was -- no, it was dropped.

Q So it was charged as domestic assault in 2000?

A It was dropped.

Q Listen carefully to the question, Mr. Fields. Answer the question. Were you charged with domestic--

Q I was charged, and it was dropped because of drugs that

[Page 20]

were involved by the Plaintiff. Is that what you're asking me?

Q Were you charged with domestic assault again in 2001?

A Yes.

Q And was that reduced down to a disorderly?

A Yes.

Q And did -- how many days were you -- that was, actually took place in October. Is that correct?

A No, it took place in December.

Q The assault took place in December?

A No, the sentence did.

MS. TATE: Your Honor, at this point I'm going to object. I don't get the relevancy of what he's been charged with and what's occurred with these charges.

THE COURT: Ms. Schaedler?

MS. SCHAEDLER: I think, under the totality of the circumstances, your Honor, part of what the Court is going to be looking -- should be looking at is whether or not he's had any contact with the system, whether he's brand new to the system, whether he's been in and out of the system,

whether he has any clue about the system, because it has everything to do with whether or not this was a voluntary confession.

MS. TATE: Your Honor, if she wants to talk about whether or not he's been interviewed, he was taken

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to jail, interviewed in jail, interviewed at home, interviewed -- whatever, that's fine. But to just say he's been charged, you can be charged without ever having contact till you're charged.

THE COURT: The totality of the circumstances are the totality in this particular case, Ms. Schaedler.

MS. SCHAEDLER: I'm sorry. What?

THE COURT: The totality of the circumstances that the court has to look at are the totality of the circumstances that arise in this case.

MS. SCHAEDLER: Fine.

THE COURT: None of the others.

Q (BY MS. SCHAEDLER): When the officer that you referred to as Dusty came to get you at your, at your cell on the 23rd, was it in the evening of the 22nd or the evening of the 23rd?

A It was the evening of the 23rd.

Q Okay. And when he came to your cell, did you not inquire as to -- obviously, you feel pretty comfortable with these folks; you call them by their first names?

A Everyone does.

Q Do you feel comfortable with these fellows?

A. Fairly well, yes.

Q And when they came to your cell and they said, "We're going some place," did you ask where you're going?

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A I was not told.

Q Did you ask --

A No --

Q -- where you were going?

A -- I did not. You do not need to raise your voice at me.

THE COURT: All right. Just a moment. You're here to answer questions. If you don't want to answer the questions as they're asked to you, you can leave. Do you understand that? This is your motion to have this quashed.

DEFENDANT FIELDS: I understand --

THE COURT: So --

DEFENDANT FIELDS: -- but she doesn't have to yell at me. I mean, this is a repeat of what we went through in District Court.

THE COURT: Sir, I'm the person that's conducting this hearing in this case, and I'll decide whether the voices are too loud or not too loud. I want you to answer the questions as they're asked.

DEFENDANT FIELDS: Okay.

THE COURT: Do you understand that?

DEFENDANT FIELDS: That's fine.

THE COURT: Do you understand that?

DEFENDANT FIELDS: Yes.

THE COURT: All right. Thank you.

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You may proceed.

Q (BY MS. SCHAEDLER): You didn't ask where you were going?

A No, I did not.

Q Would it be safe to say that you were fairly trusting that they weren't taking you anyplace terrible?

A No, it -- actually, it was -- I thought I was just I didn't know where I was going; no one ever said where I was going.

Q Okay. But you didn't ask. Is that --

A No, I did not.

Q So you weren't worried about where you were going?

A I felt like I was in a safe environment.

Q You went through J door. Did you still feel like you were in a safe environment?

A I asked where I was going when I got to J door.

Q And did they tell you?

A No.

Q Now, this conference room that you talked about, it's a fairly big room, isn't it?

A It's not real large, but it's not small, either.

Q It has a conference table?

A There's a conference table, I believe, and a desk and a white board and some chairs around the table.

Q Okay. Well lit?

A Yes.

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Q Did anybody physically touch you or harm you while you were in this room?

A No.

Q Did anybody threaten you, verbally say, "If you don't tell us, we're going to do something terrible to you"?

A The only threat I received was when I was told to sit my fucking ass down.

Q And those were the words that were used?

A Yes, they are.

Q And were you also told at that point that, if you didn't want to talk anymore, you could go back to your cell?

A I was told, if I didn't want to cooperate, I could leave.

Q Okay. And when you did get ready to leave, how long did it take the jailers to come get you?

A About 20 minutes.

Q Twenty minutes. Isn't it in fact true that part of the struggle was that Deputy Batterson said that the time line you wanted to put on the board wasn't relevant to the matter at hand?

A Deputy Batterson did not say that to me.

Q Deputy Sharp?

A Neither one of them.

Q And what kind of a time line did you want to give them?

A I was trying to draw them a time line of events.

Q What kind of events?

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A Because they kept trying to accuse me of having sexual activity with Tristen Jennings.

Q And you were denying that?

A I denied it.

Q And prior to that point, had you been comfortable? Had you been made comfortable in this room?

A It was -- I was not uncomfortable in this room, other than the things that they were saying to me --

Q Well--

A -- and the fact that I had no access to leave that room.

Q Did they tell you that they would have a jailer come get you and take you back to your cell any time you wanted to?

A No, I was not told that. I was told I could get up and leave whenever I wanted.

Q Well, how did you get there?

A By a jailer.

Q And didn't it occur to you that, since you were in custody, that that's exactly how you would get up and leave is that they would have a jailer come get you?

A I didn't know whether they would do that or if they would take me back themselves.

Q You had been in jail at that point on more than one occasion. Is that correct?

A I had been in jail twice up until that time. That was

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the second time I was in jail.

Q You're not generally allowed to just roam around Lenawee County Jail on your own, are you?

A No, I never have.

Q So wouldn't it make sense to you, since you had that experience, that in fact you would have been escorted just like you were escorted through J door and into this conference room?

A That makes common sense.

Q So when they said that you were free to leave and you get up -- could get up and go and all you had to do was tell them you wanted to go, in your mind, did you understand that to mean that somebody would come get you and take you back to your cell?

A But that doesn't give me freedom to just get up and walk away.

Q I understand it doesn't --

A So, no.

Q The question is this, sir, not whether you had freedom to get up and walk away, but did you understand that what that meant was that a jailer would come get you and --

A No --

Q -- take you back to your cell?

A I did not understand that.

Q You didn't?

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A No.

Q Why not? That's how you got there.

A Because I did not know if a jailer would take me back or if one of those gentlemen would take me back.

Q But you understood that, if you asked, one of them or a jailer would take you back to your cell?

A I assumed that.

Q And you believed that to be true?

A I assumed that.

Q Did you ever ask to go back to your cell?

A No, not until the end.

Q And you were taken back to your cell?

A I was continued to be questioned While I was waiting for the jailer to come back.

Q Did you ever say, "I don't want to talk "anymore"?

A A couple of times, yes.

Q Okay. And did they continue even though you --

A Yes --

Q -- said that?

A --they did.

Q Okay. Did you ever ask for an attorney?

A I was never told I could have one.

Q Sir, did you ever ask --

A I --

Q -- for an attorney?

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A -- have never been arrested for a felony, so, no --

Q sir --

A -- I did not ask for an attorney.

Q Sir, you have had your rights read to you on more than a few occasions, haven't you?

A I have had my rights read to me once.

Q Once?

A One time.

Q You were arraigned in District Court on your disorderly charge, weren't you?

A Yes, I was.

Q You were read your rights, weren't you?

A No, I was not.

Q You were never read your rights?

MS. TATE: I'm going to object at this point in time. District Court does not read Miranda rights to people. They read a totally separate and distinct group of rights, such as right to an attorney, but they also say right to have a trial and other rights.

THE COURT: Are you giving testimony, Miss Tate?

MS. TATE: No, but I was objecting, your Honor.

THE COURT: What is --

MS. TATE: You need the basis of my objection.

THE COURT: -- the basis of the objection, Miss

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Tate?

MS. TATE: Basically, the basis is she's assuming that the rights given in District Court are different -- or are the same rights as would be given under Miranda rights.

THE COURT: I think she's just asking questions.

You may ask the questions, Ms. Schaedler.

Q (BY MS. SCHAEDLER): You were arraigned on a domestic -- were you ever arraigned on the domestic assault in 2000?

A Yes.

Q And were you read your rights to have a trial?

A I was given a piece of paper to sign.

Q And did it have your rights on it?

A Yes.

Q And did it tell you that you could have an attorney?

A Yes.

Q Did it tell you that you could remain silent?

A Yes.

Q It told you about your right to have a trial?

A Yes.

Q Did you have that same form in 2001?

A No.

Q Were you read your rights in 2001 at the time that you were arraigned?

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A In District Court?

Q Yes.

A I don't remember.

Q Okay. Did you sign a form in 1994 on your assault charge?

A I don't remember.

Q Do you remember being arraigned on your assault charge?

A I remember it. It was almost ten years ago.

Q Were you read your rights then?

A I don't remember.

Q Do you remember if you were ever read your rights, you signed a waiver of rights, when you were charged --

MS. TATE: I'm going to --

THE COURT: counsel, come back in chambers, please.

You may step down.

(At 9:10 a.m., conference in chambers.)

(At 9:12 a.m., court reconvenes, all parties present.)

MS. TATE: Mr. Fields (indicating).

THE COURT: You're still under oath.

Miss Schaedler, you may proceed.

MS. SCHAEDLER: Thank you.

Q (BY MS. SCHAEDLER): Were you offered food or water during the course of this interrogation?

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A I was offered water.

Q And were you given water when you requested it?

A Yes, I was.

Q Were you ever denied water when you requested it?

A No, I was not.

Q Did anybody threaten you with physical harm?

A No, I was not threatened.

Q Did anybody threaten you or your family with physical harm?

A My family was not present; it was just me.

Q Was your family ever threatened?

A I have no idea.

Q Did these officers ever threaten to harm your family if you didn't continue the interview or speak with you?

A No, they did not.

Q Did they ever strike you?

A No, they did not.

Q Did they ever lay hands on you?

A No, they did not.

Q Other than the language you've just indicated earlier about when you tried to do a time line, in general, did they use bad language or threatening language towards you?

A No.

Q Would you say that the interview was conducted in a

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conversational way, or was it all questions that you answered, or did you ask questions, and were you an – were your questions answered when you asked?

A I asked questions, and my questions were answered. They asked questions, and their questions were answered.

Q Were you ever promised anything during the course of this, if you said this or did that, that you would get a lighter sentence or they wouldn't charge you?

A Yes, I was.

Q And what was the promise that was made?

A I was told that, if I would tell the truth and be honest, that I would get very little time, I might not get any time at all, that they realize that I had been through some of these behaviors in the past, that the Courts are much easier on people if they have a previous history, and that was told to me by Mr. Batterson.

Q Did he promise that or just suggest that, if you were truthful, it might go better?

A He told me it would happen that way.

Q And --

A He told me they followed his recommendations almost all the time.

Q He told you that?

A Yes, he did.

Q Did he tell you you wouldn't be charged?

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A No, he did not.

Q So the statement you gave him that night was truthful?

A Which statement are you referring to?

Q All of it.

A No, it is not. There are many statements in that police report that are not true. There are many statements that were given that are not included. The statements on the 22nd, there is no write-up for it that I have seen.

Q On the 22nd or the 23rd?

A The 22nd of January, when he arrested me, because he again talked to me at that time, and at that time we talked in the same, exact room.

Q At the time you were --

A That he had told me that I was arrested, and he did read me my rights, on January the 22nd.

Q Thank you. Mr. Fields, on the 23rd, when you had this conversation with him, you were told, if you were truthful and honest with him, that it would go better with the court and you might not get as much jail time. Did you give him truthful statements as it related to Mr. DuDock and Mr. --

A I did not talk to him about --

MS. TATE: I'm going to object to –

A -- Mr. DuDock --

MS. TATE: -- the relevancy of whether the

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statements given are truthful or not truthful. I believe that's irrelevant as to whether or not they were coerced. He, basically –

THE COURT: Well, there was a question that was asked him about January 22nd. Is it January 22nd or December?

DEFENDANT FIELDS: That's the day I was arrested. He came back to see me a month later at my home and arrested me.

THE COURT: I see.

DEFENDANT FIELDS: I was interviewed --

THE COURT: All right. I understand. So on January the 22nd --

DEFENDANT FIELDS: Is the day I was arrested.

THE COURT: -- you were arrested, and you were read some rights at that time. Is that correct?

DEFENDANT FIELDS: He did read me my rights at that time.

THE COURT: And at that time did you give a statement to him?

DEFENDANT FIELDS: I talked to him again that day, but --

THE COURT: Was that at your house?

DEFENDANT FIELDS: No, that was in J room.

THE COURT: All right.

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DEFENDANT FIELDS: And there were no –

THE COURT: Did you sign a waiver of rights at that time?

DEFENDANT FIELDS: No, I did not.

THE COURT: All right. But he did explain your rights to you?

DEFENDANT FIELDS: He did read me my rights on that day.

THE COURT: And at that point you made a statement. Is that correct?

DEFENDANT FIELDS: Yes, but it was never documented, or, at least, I never got a copy of it.

THE COURT: What were the statements that you gave to him?

DEFENDANT FIELDS: He asked me about any events with Travis, with Tristen, if there was anything new, had I had sex with anybody in the previous -- during the week of time that I was out of jail. I'm trying to think what else he asked me.

I talked to him about Travis and the PlayStation that he had stolen from my house and that that's what had initiated most of the stuff, but I have not seen any of this stuff ever put into writing, and I don't know if it ever was.

THE COURT: All right. And then you had

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another interview on January 23rd?

DEFENDANT FIELDS: No. I was in jail then.

THE COURT: All right.

DEFENDANT FIELDS: This was January 22nd.

THE COURT: Okay. Thank you.

DEFENDANT FIELDS: That's the night they arrested me.

THE COURT: All right.

Miss Schaedler, you may continue.

MS. SCHAEDLER: She's raised an objection as to my question about the interview on the 23rd, whether or not in fact the items, the information he gave references sexual activity with Travis --

THE COURT: I see.

MS. SCHAEDLER: and Tristen was truthful.

MS. TATE: Your Honor, we would object. Whether truthful or not truthful is irrelevant for the purposes of this hearing.

THE COURT: True.

MS. TATE: This hearing is to determine whether or not it was given voluntarily.

THE COURT; True.

Q (BY MS. SCHAEDLER): Based on the information that Deputy Batterson gave you, were the statements you made as it related to Travis Bice voluntary? You wanted to benefit

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from his promise?

A I don't know that I wanted to benefit from any promise; I don't know that I wanted to dis-benefit

from it. You know? There are true statements in the police report and there are false statements in the police report as it was written.

Q But the statements that you gave to him on --

A They are partially written true --

THE COURT: Just a minute.

A -- partially --

THE COURT: Just a minute.

A -- written false.

THE COURT: Just a minute, Mr. --

MS. TATE: Your Honor, I renew my objection in regards --

THE COURT: We're going to take this one at a time. First of all, the question wasn't even finished before you started to answer. So before you answer the question, you let her finish her question.

Before you make an objection, let her finish her question.

MS. TATE: Okay.

THE COURT: Miss Schaedler, ask the question.

MS. SCHAEDLER: Thank you.

Q (BY MS. SCHAEDLER): So the statements you made to him,

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after he had indicated that being truthful would be helpful to your situation, were made in a voluntary fashion by you? You volunteered to make those?

A I made no statements until after the time line was refused, because we finished with

The COURT: That wasn't the question.

A -- the --

THE COURT: Sir--

A -- time line --

THE COURT: Sir--

A -- before

THE COURT: Sir--

A -- we --

THE COURT: Mr. Fields, stop. When I tell you to stop, you –

Take him away. We're not going to finish this hearing this morning.

(At 9:40 a.m., proceedings concluded.)

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CERTIFICATE

STATE OF MICHIGAN)
) SS.
COUNTY OF JACKSON)

I certify that this transcript, consisting of 39 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on June 21, 2002.

August 15, 2004

/s/ Sally L. McFeters
Sally L. McFeters, CSR 2317
Certified Shorthand Reporter

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF LENAWEE

PEOPLE OF THE STATE OF MICHIGAN

V FILE NO. 02-9738-FC
02-9739-FH
02-9749-FC

RANDALL LEE FIELDS

Defendant.
_____/

JURY TRIAL – VOLUME I OF II

BEFORE THE HONORABLE HARVEY A. KOSELKA,
CIRCUIT JUDGE

Adrian, Michigan – Tuesday, October 22, 2002

APPEARANCES:

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Certified Electronic Reporter

TRANSCRIBED BY: Mary Kay Shoemaker, RMR, CSR
2669
Certified Court Reporter

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to tell the truth, the whole truth, and nothing but the truth so help you God?

DEPUTY BATTERSON: Yes, sir, I do.

MS. TATE: Your Honor, just for the record we continue our objection that was addressed earlier this week.

THE COURT: I don't think that's necessary, but the record will so show.

DEPUTY DAVID BATTERSON

Having been called at about 2:03 p.m. by the People, sworn by the Court, testified:

DIRECT EXAMINATION

BY MS. SCHAEDLER:

Q Please state your full name and place of employment for the record.

A David Batterson. Lenawee County Sheriff's Department.

Q And Deputy Batterson, as a result of that employment did you have reason to come in contact with and interview Randall Fields?

A Yes, I did.

Q And with regard to that interview, did that involve a relationship with Travis Bice?

A Yes, it did.

Q And when did that interview take place?

A It took place at the Lenawee County Sheriff's Department in December of 2001, the exact day I do not recall.

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Q Okay. And when you were -- was there any other person present besides yourself and Mr. Fields?

A Yes, there was, Deputy Sharp.

Q And is he also with the sheriff's department?

A Yes, he is.

Q Okay. And how did you commence that interview?

A Mr. Fields was incarcerated on an unrelated matter

MS. TATE: Objection, Your Honor.

THE COURT: That objection is good.

BY MS. SCHAEDLER (Continuing):

Q Just talk about the interview.

A Okay. I interviewed him at the Lenawee County Sheriff's Department in the conference room.

Q And during the course of that interview or at what point in that interview if at all did you ever explain to him why you were there?

A Sometime around the initial conversation I explained to him that I wanted to speak with him in regards to a subject, Travis Bice.

Q And as you related to him that you wanted to talk to him about Travis Bice, did he indicate that he was acquainted with or knew a Mr. Bice?

A Yes, he did.

Q And how did he indicate to you that he knew Mr. Bice?

A He told me that Travis Bice was a neighbor of his, teenage

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boy, and frequented his house regularly.

Q And how did he describe his relationship with Travis?

A As more of a fatherly figure.

Q And he used that term?

A I recall, yes, he did.

Q And did you indicate to him that there had been allegations by Mr. Bice of a sexual nature regarding himself and Mr. Bice?

A Yes, I did.

Q And did he initially acknowledge that?

A No, he did not initially acknowledge that.

Q Okay. And did you continue to interview him?

A I did.

Q And did he ultimately indicate to you that there had been a relationship?

A Yes, he did.

Q And during the course of that acknowledgement what did he have to say to you about what had taken place between he and Mr. Bice or the details of that?

A He advised me that he had in fact had oral sex with Travis Bice at his home in Tipton in Lenawee County and had also masturbated him.

Q Okay. So he had masturbated him in what way?

A On one occasion Mr. Fields told me that Travis was in Mr. Fields' bedroom masturbating with some type of sex aide.

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Mr. Fields went into the bedroom, took over masturbating Travis Bice. I believe that was one of the first incidents he alluded to.

Q And were the two of them alone at that time?

A I believe so, yes.

Q And he indicated that that was one of the first sexual encounters he had with Travis?

A That he himself had had. He advised me that he had witnessed another between he and another subject that lived in the house.

Q Okay. And that would be Mr. Philo?

A Yes.

Q You indicated that he had also indicated that he had oral sex with Travis?

A That's correct.

Q And did he describe for you what he meant by oral sex?

A He placed his penis in Travis Bice's mouth and vice versa, Travis Bice placed his penis in Mr. Fields' mouth, and they performed oral sex on each other.

Q And did he indicate to you on how many occasions that would happen?

A Two to three as I recall.

Q And did he tell you what time frame that would have happened in?

A I believe around August of 2001 into the month of November of

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the same year, possibly the beginning of December of the same year, '01.

Q And did he indicate -- you indicated that he had acknowledged that he had had sexual -- oral sex with Travis on three occasions. Did he indicate whether or not he had performed it on three occasions and Travis had also performed it on him on those three occasions or --

A The incidents that he spoke of were mutual. I don't know if it was three where they had each performed oral sex on each other. I recall one specifically.

Q Okay. Was he able to time frame any of those or give any special --

A He was. He was able to put a month to it.

Q Okay. And which one was he able to put a month to?

A If I could refer to my report I will be able to give you that month.

Q Please.

A In the month of September 2001 they performed oral sex on each other, and Mr. Fields spoke of another incident that occurred in Toledo at a motel.

MS. TATE: Objection, Your Honor.

MS. SCHAEDLER: Your Honor, under Garr I believe it's admissible.

MS. TATE: We're talking about something outside of the jurisdiction of this Court. It's more prejudicial than

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probative. Anything at issue --

THE COURT: I think we can bring in the entire conversation he had at that time. Objection is overruled.

MS. SCHAEDLER: Thank you.

THE WITNESS: Mr. Fields spoke of an incident that occurred in Toledo at a motel that he, Mr. Jimmy Philo, and Travis were at, and that was in the month of November of 2001 where they all performed oral sex upon each other.

BY MS. SCHAEDLER (Continuing):

Q Okay. So he was able to tell you about a time in September when they performed mutual acts of oral Sex on each other?

A That is correct.

Q And that time in September had taken place at the home on Monroe Road in Tipton?

A Yes, that is correct.

Q County of Lenawee?

A Yes.

Q And then another time that would have happened out of this jurisdiction?

A That is correct.

Q One time where he says he masturbated him with his hand?

A Yes. And I believe there was another incident of masturbation.

Q Okay. Did he give any specific -- he indicated that this started sometime in September of 2001, August to

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(Tape 1, October 22, 2002; 14:10:17)

September of 2001. Did he indicate where in this time line the first masturbation took place?

A That would have been August of 2001 in Mr. Fields' bedroom.

Q And then he described the event in September of 2001 with mutual oral contact?

A Yes, that's correct.

Q And then the event in the motel in Toledo?

A Yes.

Q He indicated that on a whole this would have happened approximately three times?

A Three to four, yes.

Q Three to four times. And was he able to give you anything more specific? You have one in September, one at the motel in Toledo, and then you have and he was talking when he said three to four times, the mutual oral sex would have taken place three to four times?

A Right, that is correct.

Q Okay. And did he describe any of those other --

A Well, I'm sorry, I think I misunderstood your question. Did you say oral sex three to four times?

Q That's correct.

A I believe oral sex would have been twice, masturbation would have been twice, a total of four sexual encounters.

Q So you would have two events of oral sex where they

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mutually --

A Yes.

Q -- performed it on each other, and one happened in Toledo and one happened in Michigan?

A That is correct.

Q And then you'd indicated two counts or two times that he would have masturbated him?

A Yes, in Lenawee County.

Q Was that consistent with the statement -- first of all, did you talk to Travis Bice first or Randy first?

A I spoke with -- excuse me, with Randy first.

Q So when you went to talk to Travis Bice, you already had Mr. Fields' confession --

A That is correct.

Q -- in hand?

A Yes, I did.

Q Okay. So he originally told you that nothing happened?

A That is correct.

Q And did you tell him that you knew better?

A Yes. We're speaking of Travis now?

Q Yes.

A Yes, that's correct. Initially he said that nothing happened, and then he told the whole story.

Q Then you indicated but wait a minute, this is what I have from Mr. Fields?

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A Right.

Q After you confronted him with what Mr. Fields had said, what if anything was he able to say to you?

A He confirmed the statements that Mr. Fields had given to me that in fact they had had oral sex and there was some masturbation involved also.

Q Did he indicate that there was more than one occasion of oral sex in the State of Michigan?

A As I recall yes, two, possibly three.

Q Did he acknowledge the event in Toledo?

A I would have to refer to my report if I could --

Q Please do.

A -- briefly. Yes, he did in fact confirm that in a statement to me that there was a sexual encounter in Toledo in a motel.

Q Did he ever acknowledge that he had performed oral sex on Randy Fields?

A Yes, he did.

Q Now, you heard him here today, he indicates that never happened.

A I did.

Q Did you ever tell him or threaten him or in any way suggest to him that if he weren't telling the truth you were gonna -- or if he didn't tell about what happened between he and Randy you were going to take him to jailor he was going to get in trouble?

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A Absolutely not.

Q Now, today we took a break, you spent some time with Travis?

A I did.

Q How long have you been a deputy?

A I've been a deputy a year, I've been a police officer for eight.

Q And how many criminal sexual contacts have you tried or have you investigated in that -- those nine years?

A Several.

Q Okay. And is this the first time you've ever had a victim recant --

A No, it is not.

Q -- or not tell you the truth when you first talk to them?

A No, it is not.

Q Okay. So today when Travis got all with doubt, didn't want to talk to the judge or the jury, was that news to you?

A No, it was not.

MS. TATE: Your Honor, I would have to object. She's asking for speculation and expertise he does not have.

THE COURT: I think the objection -- well, that question and answer can stand. Let's move on.

BY MS. SCHAEDLER (Continuing):

Q Did you at any time during the break threaten that if he didn't come in and tell about sex with Randy or that if he didn't continue to tell about sex with Randy that he was in

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trouble?

A Absolutely not.

Q Did you in any way attempt to coerce him other than to tell the truth?

A No.

Q I mean, did you coerce him to tell the truth? That was a poor question.

A No, there was no coercion.

Q What exactly have you done with him since this -- the break that we took?

A We ate lunch together.

Q Did you also have a time when you talked to Tristan, Tristan Jennings?

A Yes.

Q And did Tristan Jennings acknowledge to you contact with --

MS. TATE: Objection, Your Honor, this is irrelevant. It' s not within the scope of 404(b).

THE COURT: That objection is good.

MS. SCHAEDLER: I'll move on.

I have nothing further of this witness at this time, Your Honor.

CROSS-EXAMINATION

BY MS. TATE:

Q Officer Batterson, you indicated that you basically took Mr. Fields into a room at the sheriff's department, correct?

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A That's correct.

Q Was that the conference room there?

A Yes.

Q What time of day or night did this interview take place?

A Without being totally accurate I would estimate around 7 to 9 p.m. I don't recall, it's been several months.

Q Is that when it started, between 7 and 9 p.m.?

A As best I can recall.

Q When did this interview actually end?

A Sometime after midnight.

Q Would that be approximately 1-2 in the morning, something in there it ended?

A Approximately.

Q Could it have been later than 2:00 that it ended?

A I don't believe so.

Q Did you ever give Mr. Fields any of what's termed Miranda warnings during this interview?

A No, I did not.

Q Didn't tell him he had a right to an attorney?

A No, I didn't.

Q Didn't tell him he had a right not to talk to you if he wanted to?

A I told him he was free to leave the conference room at any time.

Q Did he ever ask to leave the conference room?

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A No, he did not.

Q And through this multiple hour interview about what time did these supposed confessions come out of Mr. Fields?

A Near the end I would say.

Q So, before maybe 1 or 2 in the morning he had not confessed anything, correct?

A Well, I couldn't say that.

Q But before 1 or 2 he had not talked about having any sexual relationship with Mr. Bice; is that correct?

A I don't recall exactly when the admissions were made. I know they were not made in the initial part of the interview.

Q Did you provide Mr. Fields with any food or water during this interview?

A I don't believe so. It was certainly offered on more than one occasion. He may have been provided with a beverage, I don't recall, but it was offered to him.

Q So you're saying all these statements that he did this occurred towards the end of the interview, correct?

A Sometime toward -- it was not in the initial phases. If you wanted a --

Q Was he denying --

A -- a time I couldn't give you a good representation.

Q Was he denying these actions at the initial stages of the interview?

A In the initial stages he did.

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Q So for a period of a few hours he denied any contact, correct?

A Well, no, I wouldn't say that's correct. We didn't specifically focus the entire time on the subject of Mr. Bice. We spoke about other things, his life, family issues that he had. So the entire interview was not focused on the incident with Travis Bice.

Q Did you ever yell at Mr. Fields and tell him to shut up and sit down at one point?

A No, I did not.

Q You never said that to him?

A I told him that he could leave. He jumped up at a certain point in the interview and began yelling and screaming at me, and I stood up and told him that

he was welcome to go back to his cell, that I was not going to tolerate being talked to like that.

Q Did you get somebody to take him out of the room?

A No, he didn't want to leave. He sat back down, he calmed back down, continued the conversation.

Q So at least at part of the interview he was getting upset and aggravated with you; is that correct?

A Actually just for a brief moment, maybe two minutes.

MS. TATE: Nothing further, Your Honor.

THE COURT: Ms. Schaedler?

MS. SCHAEDLER: Nothing further of this witness.

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THE COURT: You may step down. You may call your next witness.

MS. SCHAEDLER: We would call Deputy Sharp. We would ask that he remain available as a witness though.

THE COURT: Raise your right hand, please. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

DEPUTY SHARP: I do.

THE COURT: Please be seated.

DEPUTY DALE SHARP

Having been called at about 2:21 p.m. by the People, sworn by the Court, testified:

DIRECT EXAMINATION

BY MS. SCHAEDLER:

Q Scoot right up to that microphone. Deputy, please state your full name and place of employment for the record.

A Deputy Dale Sharp, Lenawee County Sheriff's Department.

Q And how long have you been a deputy?

A Three years at the Lenawee County Sheriff's Department.

Q Have you been a deputy someplace other than that or an officer?

A That's right.

Q And where was that?

A Wayne County Sheriff's Department.

Q And how long were you with Wayne County?

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A Approximately five years.

Q And did you become involved in the interview and investigation of a criminal sexual conduct involving Randall Fields?

A Yes, I did.

Q And with regard to that, were you with Deputy Batterson when Mr. Fields was being interviewed?

A Yes, I was.

Q And did you participate in that interview?

A I just sat in basically.

Q Okay. So you didn't speak or --

A No, I did not.

Q Is it usual that you would have two officers present?

A Um, I was Deputy Batterson's FTO, that's the -- why there was two of us.

Q Okay. So you were the field training officer --

A That's correct.

Q -- for Deputy Batterson?

A That's correct.

Q And your obligation is to observe his behavior and make sure it's appropriate?

A That's correct.

Q Okay. And on this particular occasion do you remember being in the conference room at the sheriff's department?

A Yes, I do.

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Q And about approximately what time did you and Deputy Batterson take Mr. Fields into that room if you recall?

A I would have to refer back to the report. I would say it was in the late afternoon, probably about 6:00 in the evening.

Q And how long did the interview last?

A Approximately seven hours.

Q Is that an unusually long time for an interview?

A No, it's not.

Q During that period of time did Deputy Batterson at any time yell at Mr. Fields?

A No, he did not.

Q Did he ever threaten Mr. Fields?

A No, he did not.

Q Did he ever offer him food or water?

A Yes, he did.

Q Was that offer ever accepted?

A Yes, it was.

Q Okay. Do you recall what was served to Mr. Fields?

A Mr. Fields was given a glass of water or a styrofoam cup of water.

Q Did Mr. Fields ever ask to leave?

A No, he did not.

Q Was there ever a time that he was asked to leave?

A Um, Deputy Batterson mentioned to Mr. Fields -- Mr. Fields -- let me start over. Mr. Fields got angry at one point during

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the interview, stood up and started pointing his finger at the chalkboard saying those dates can't be right, those dates can't be right. And Deputy Batterson stood up and said if you continue to yell, you know, we can terminate this interview if you would like to and I can call a correctional officer at that time to come get you. At that time Mr. Fields sat back down and continued the interview.

Q As his field training officer did you observe anything that the deputy would have done that would of been contrary to appropriate protocol?

A No, I did not.

Q Were you also present when Deputy Batterson would have interviewed Travis Bice?

A Yes, I was.

Q And did that take place before or after you spoke with Mr. Fields?

A It was after.

Q Did he at any time threaten Travis Bice?

A No, he did not.

Q Did he ever tell him that if he was lying he was gonna go to jail?

A No, he did not.

Q Did Mr. Bice initially acknowledge these events took place with Mr. Fields?

A He was hesitant.

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Q Did that seem unusual to you?

Q No, not for a person of that age who, you know, that's pretty traumatic I would say. So it would be normal I would say.

MS. SCHAEDLER: I have nothing further at this time.

CROSS-EXAMINATION

BY MS. TATE:

Q You indicated the seven hour interview is not unusual, to interview somebody for seven hours; is that correct?

A That's correct.

Q How many seven hour interviews have you actually conducted in your career?

A That I have?

Q Yes.

A That would be the first one I would say.

Q How many have you actually observed in your career, seven hour interviews?

A That I have?

Q Yeah.

A I would say that's the first one.

Q That's the first one you've been involved in and the first one you've seen, but it's not unusual, correct? Is that what you're saying today?

A I would say based on Mr. Fields' --

Q I'm asking you the first one you've seen, the first one you're involved in, that makes it not unusual, correct? Is

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that what you're saying?

A Based on the schools I've been -- the school I went to after the fact I would say --

Q I'm asking based on your experience is it unusual?

A Based on what you've just said?

Q Yeah. Yeah.

A No.

Q Okay. You've never done it before and you've never seen it done, so it's not unusual, correct?

MS. SCHAEDLER: Your Honor, that doesn't make it usual or unusual.

THE COURT: I think that's correct. I just don't under --

MS. TATE: Well, he's saying based on his experience that's not unusual to have a seven hour interview, and I just want to clarify that he's only done it this one time.

THE COURT: He said that.

MS. TATE: Okay.

BY MS. TATE (Continuing):

Q Is it unusual to conduct an interview until maybe midnight, 1-2 in the morning?

A No.

Q How many of those have you been involved in?

A How many of those?

A Yeah, interviews that extended to 1-2 in the morning have you

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been involved in?

A I would say a couple.

Q How many years have you been an officer?

A Eight years.

Q So two in eight years you've been involved in; correct?

A That's correct.

Q Other than Mr. Fields, how long ago was the last one?

A Last one besides Mr. Fields, I would say maybe three months ago or so.

Q So there was one after Mr. Fields, correct?

A I would say a couple after Mr. Fields.

Q Were there any before Mr. Fields's interview that extended that far into the morning hours?

A No.

Q Now, was Mr. Fields ever told he could talk to an attorney about this?

A No.

Q Was he ever told he didn't have to talk to you?

A He said, Deputy Batterson, that he could leave at any time during the interview.

Q Was Mr. Fields ever told he did not like to talk with you?

A He said he was free to leave at any time, ma'am.

Q I'm asking specifically was he told not that he could leave, but was he told he did not have to talk with you?

A No, he was not.

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MS. TATE: Nothing further, Your Honor.

THE COURT: Ms. Schaedler?

MS. SCHAEDLER: I have nothing further of this witness.

THE COURT: You may step down. You may call your next witness.

MS. SCHAEDLER: Your Honor, we have no further witnesses at this time.

THE COURT: Tristan Jennings and I believe Jimmy Philo are endorsed on one of the Informations.

MS. SCHAEDLER: They're endorsed as witnesses to be available. Mr. Philo -- may we approach?

THE COURT: Let me ask, do you want them produced?

MS. TATE: I will be calling Mr. Jennings, Your Honor. Mr. Philo, yeah, he doesn't need to be produced.

MS. SCHAEDLER: We will be producing him tomorrow would be my guess, Your Honor.

THE COURT: Are you resting?

MS. SCHAEDLER: At this time we are.

MS. TATE: May we approach, Your Honor?

THE COURT: Certainly.

(Bench conference as follows:)

MS. TATE: I guess my question is if she's waiving his production today --

MS. SCHAEDLER: I'm not waiving his production. If you want me to produce him, I'll produce him.

OPPOSITION BRIEF

No. 10-680

In the

Supreme Court of the United States

CAROL HOWES,
Petitioner,

v.

RANDALL LEE FIELDS.
Respondent.

ON PETITIONER FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether this Court's clearly established precedent holds that a prisoner is "in custody" for purposes of *Miranda* when he is removed from the general prison population, subjected to further restrictions on his freedom of movement and is interrogated about conduct occurring outside the prison and unrelated to the reason for his incarceration?

PARTIES TO THE PROCEEDING

All parties to the proceedings are listed in the caption. The Petitioner is Carol Howes, warden of a state correctional facility. The Respondent is Randall Fields, an inmate.

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A. There is no conflict among the Circuits where the cases Petitioner relies upon are not factually similar to the instant case nor to *United States v Mathis*. 9

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RESPONDENT'S APPENDIX

People v Randall Fields
10/21/02 Transcript of Decision on
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Carey v Musladin, 549 U.S. 70 (2006) 18

Cervantes v Walker, 589 F.2d 424 (9th Cir. 1978) 11

Dickerson v United States, 530 U.S. 428 (2000) 9, 10

Edwards v Arizona, 451 US 477 (1981) 12

Estelle v Williams, 425 U.S. 501 (1976) 18

Garcia v Singletary, 13 F.3d 1487 (11th Cir. 1994) 11

Georgison v Donelli, 588 F.3d 145 (2nd Cir. 2009) ..... *passim*

Illinois v Perkins, 496 U.S. 292 (1990) 13

Leviston v Black, 843 F.2d 302 (8th Cir. 1988) 10

Maryland v Shatzer, ___ U.S. ___, 130 S. Ct. 1213 (2010) 8

Mathis v United States, 391 U.S. 1 (1968) ..... *passim*

Miranda v Arizona, 384 U.S. 436 (1966) ..... *passim*

Stansbury v California, 511 U.S. 318 (1994) 20

Thompson v Keohane, 516 U.S. 99 (1995) 20

United States v Conley, 779 F.2d 970 (4th Cir. 1985) 11

United States v Cronic, 466 U.S. 648 (1984) 18

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United States v Turner, 28 F.3d 981 (9th Cir. 1994) 10

United States v Willoughby, 860 F.2d 15 (2nd Cir. 1988) 10

Williams v Taylor, 529 U.S. 362 (2000) 17, 18

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OPINIONS BELOW

The opinion of the Court of Appeals affirming federal habeas relief, *Fields v Howes*, is reported below at 617 F3d 813 (6th Cir, 2010). Pet. App. 2a-30a. The Opinion and Order of the United States District Court for the Eastern District of Michigan granting habeas relief is unpublished. Pet. App. 32a-51a.

The Michigan Supreme Court decision denying the application for leave to appeal, *People v Fields*, is reported at 472 Mich. 938, 698 NW2d 394 (2005). Pet. App. 52a. The decision of the Michigan Court of Appeals affirming Fields' conviction is unpublished. Pet. App. 53a-62a.

JURISDICTION

Respondent accepts Petitioner's statement of jurisdiction. Jurisdiction is based on 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment states in pertinent part:

No person ... shall be compelled in any criminal case to be a witness against himself...

The statute involved is 28 USC 2254(d) which provides:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgement of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim

> (1) resulted in a decision that was contrary to or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or.
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

INTRODUCTION

While Respondent was serving a 45-day sentence on a disorderly conduct conviction, deputies extracted an inculpatory statement from him regarding conduct occurring outside the prison without first advising him of his *Miranda* rights. *Miranda v Arizona*, 384 U.S. 436 (1966). The interrogation occurred under circumstances where Respondent was deprived of his freedom of movement in a significant way and it was taken under conditions in which a reasonable person would have believed that he was not free to leave, thus making the advice of rights mandatory. The relevant decision is *Mathis v United States*, 391 U.S. 1 (1968). The *Mathis* Court held that "nothing in the *Miranda* opinion ...calls for a curtailment of the warnings to be given based on the reason why the person is in custody."

Petitioner contends that there are two reasons for granting a writ of certiorari in this case. These are that 1) this Sixth Circuit Court of Appeals decision conflicts with a decision from the Second Circuit; and 2) the state court decision was not contrary to or an unreasonable application of clearly established supreme court law because *Mathis v United States* did not establish a bright-line test for determining when the advice of rights under *Miranda* must be given to inmates.

Randall Fields responds that the petition for certiorari filed in this case should be denied because it does not meet the "compelling reasons" standard found in Supreme Court Rule (SCR) 10. That rule offers a non-exclusive list of reasons that would earn the adjective "compelling". First, there is no conflict among the Circuits because the Second Circuit case involves the taking of a statement under circumstances that would not require the advice of rights under *Miranda*. Second, the Sixth Circuit did not make new law or impose a new obligation on the States and on the Federal government that was not already in existence. The bright line rule is based on well-established legal principles. Third, there no United States Supreme Court decisions that makes an exception of the *Miranda* requirement when a prison inmate is interrogated by officers concerning conduct that occurred outside the prison and is unrelated to the offense on which he is serving a sentence.

Because Respondent's case is controlled by the firmly established law found in *Mathis* and

Miranda, the decision by the state court was in fact contrary to and an unreasonable application of those two cases. The United States District Court's did not err in granting the conditional writ. Likewise, the Sixth Circuit Court of Appeals did not err in affirming the lower court's decision. The Petitioner has not shown a compelling reason for granting a writ of certiorari.

COUNTER STATEMENT OF THE CASE

After a jury trial, Randall Fields was convicted of two counts of criminal sexual conduct in the third degree. He was sentenced to 10-15 years in prison.

A. Pre-trial and Trial Proceedings

On December 23, 2001, Sheriff's deputies, not deputies who staffed the jail, took a statement from the Respondent while he was serving time on a 45-day misdemeanor conviction. They failed to advise him of his Miranda rights before questioning him. The statement was used against the Respondent at the preliminary examination stage through the testimony of Detective Batterson. Prior to trial, the Defense moved to quash the Information because the bindover to the trial court was based on the illegally seized statement and also moved to exclude the statement from trial.

An evidentiary hearing was held at which the Respondent testified that he was incarcerated on a disorderly conduct conviction. When the deputies interrogated him, he knew he could not freely leave the room. He was not advised of his *Miranda* rights. He was frightened of Detective Batterson. He did not know how to get back to his cell from the conference room and the door was locked. (Pet App. Transcript of Hearing 67a-93a. Both men were armed. (Pet. App. Transcript of Hearing 74a-75a).

Respondent estimated that the interrogation lasted about five hours. It ended three hours after he would normally be asleep. This also meant that he missed taking his medication at 10:00pm. The petitioner had a kidney transplant and needed to take Prograf (sp) and Cellcept, which are anti-rejection drugs and also Paxil, a medication for depression. Upon returning to his cell, Respondent was told that he could not be given these medications because it was too close in time to his 5:00am meds. (Pet. App. Transcript of Hearing 78a-80a). When defendant asked to leave it took 20 minutes for a corrections officer to arrive to return him to his cell and during that time he was still being questioned. (Pet. App. Transcript of Hearing 89a, 92a-93a).

The trial court in making its decision on the motion also relied on Deputy Batterson's testimony offered at the preliminary examination. (Res. App. Suppression Motion Transcript 3a-4a)

Batterson testified that he had Defendant's jailers take him out of his cell and bring him to a conference room on a different floor in the main part of the Sheriff's Department, away from the jail. He was dressed in jail oranges. The detective admitted that the Defendant could not have just gotten up and walked out of the room. He would have had to wait until a corrections officer came to escort him back to the cell. He admitted that he never advised Respondent of his rights under *Miranda*. (Res. App. Preliminary Examination Transcript 16a-18a).

The trial court denied the motion to exclude the statement.

At trial Detective Batterson on cross examination admitted that the interrogation started at either 7pm or 9pm and lasted until 1:00am or 2:00am. The Respondent was never advised of his *Miranda* rights. The supposed confession occurred near the end of that time period. (Pet. App. 123a-124a). Earlier in the interrogation, the defendant became upset. The Deputy told him he could leave but never got someone to take him back to his cell. (Pet. App. Trial Transcript, Batterson pp 122a-126a).

Deputy Dale Sharp testified that he was in training with Detective Batterson. He remembers that the interrogation started probably at 6:00pm in the evening and lasted about 7 hours. (Pet App. Trial Transcript, Sharp 129a, 132a-134a). Mr. Fields was never told that he could refuse to talk with the Detectives. (Pet. App. Trial Transcript, Sharp 134a-135a).

B. State Appellate Proceedings

On May 6, 2004, the Michigan Court of Appeals in a per curiam opinion affirmed Respondent's convictions. (Pet. App. 53a). The Court stated:

> Here defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although, defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

(Pet. App. 56a).

On December 9, 2004, the Michigan Supreme Court denied leave to appeal stating that it was not persuaded that the questions presented should be reviewed by the Court. One Justice would have

granted leave to appeal. (Pet. App. 52a).

C. Federal Habeas Review

Randall Fields filed a petition for a writ of habeas corpus in the United States District Court for Eastern District of Michigan. On February 9, 2009, a district court judge issued a conditional writ of habeas corpus. (Pet. App. 32a). On August 20, 2010, the United States Court of Appeals for the Sixth Circuit affirmed the decision of the district court. (Pet. App. 1a).

Other facts will be referred to in the body of the arguments and are incorporated into this Statement by reference

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED WHERE THERE IS NO CONFLICT AMONG THE CIRCUITS AND WHERE THE SIXTH CIRCUIT'S DECISION RESTS ON CLEARLY ESTABLISHED SUPREME COURT LAW APPLIED APPROPRIATELY TO THE FACTS OF THE CASE.

The Supreme Court in *Mathis v United States*, 391 U.S. 1 (1968), held that when law enforcement officials seek to question an inmate about conduct occurring outside the prison and unrelated to the reason he is in custody, and if they remove him from the general prison population, they must advise the inmate of his *Miranda* rights. *Miranda v Arizona*, 384 U.S. 436 (1966). In arriving at its decision, the *Mathis* Court rejected the Government's attempt to narrow the scope of *Miranda*:

> The Government also seeks to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights.

Id. at 4. The Court called making a distinction based on why the suspect was incarcerated or who incarcerated him as "too minor and shadowy to justify a departure from the well considered conclusions of *Miranda* with reference to warnings to be given to a person held in custody." *Id.*

The *Mathis* Court also cited with approval the broad definition of custody found in *Miranda*:

> ...we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized.

Mathis, 381 US at 5 quoting from *Miranda, supra* at 478. Thus nothing in *Miranda* calls for curtailment of the warnings solely because one is already in custody. *Mathis, supra* at 4-5.

Recently in *Maryland v Shatzer*, ___ U.S. ___, 130 S.Ct. 1213, 1224 (2010), the Court reaffirmed this holding when it found that sequestering an inmate away from the general prison population created the very scenario in which *Miranda* sought to provide protection.

In order to protect the right against self-incrimination, both the *Mathis* Court and the *Miranda*

Court felt that only the advice of rights would dispel the coercion inherent in an in-custody setting. The coercive effect of the penal environment does not disappear just because one is serving time. On the contrary, one of the most important aspects of that environment is to coerce the prisoner to obey without question the rules of the prison. Surely it is just as important, if not more important, to advise and remind an inmate that he really is free to decide whether he wants to talk with law enforcement officials. Moreover, most inmates find out fairly quickly that once incarcerated, they no longer have Fourth Amendment rigths. Therefore , an inmate-suspect must be advised that his Fifth Amendment rights are still available despite his condition as a prisoner.

In this case, the Sixth Circuit Court of Appeals correctly held that the Michigan Court of Appeals' decision that this un-Mirandized, in-custody Respondent's statement was voluntary, was contrary to and an unreasonable application of *Mathis v United States*.

A. There is no conflict among the Circuits where the cases Petitioner relies upon are not factually similar to the instant case nor to *United States v Mathis*.

Under SCR 10(a), a conflict among the Circuits on the same issue is a factor to consider in deciding whether to grant a petition for a writ of certiorari. In support of its petition, the State of Michigan offers several cases from different circuits to show that there is a SCR 10(a) conflict among them. But the cases it relies upon are neither analogous to the facts of this case nor to the facts in *Mathis v United States*, 391 U.S. 1 (1968).

Significantly for this discussion, the *Miranda* Court itself recognized three situations in which the advice of rights would not be required. First, the suspect must be in custody because by its very nature custodial interrogation is inherently coercive. It isolates and pressures the individual even without employing brutality or the third degree. It exacts a heavy toll on individual liberty and trades on the weakness of individuals. *Miranda, supra* at, 449-450, 455; *Dickerson v United States*, 530 U.S. 428, 435 (2000). If there is no custody, *Miranda* does not apply. Second, *Miranda* was not applicable to on-the-scene questioning. "General on-the-scene questioning as to facts surrounding a crime...is not affected by our holding." 384 U.S. at 477. Third, and most obvious, where the

individual voluntarily initiated contact with the authorities, *Miranda* is not applicable because "Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding... . *Id* at 478.

The *Mathis* Court, decided four years after *Miranda*, was aware of those exceptions and did not expand the requirement that rights be given to those situations where the rights were already recognized not to be applicable. It merely addressed the "in custody" requirement and found that it was satisfied where the inmate was serving time on an unrelated conviction and was removed from the general prison population for questioning. These factors made the encounter coercive requiring that his Fifth Amendment rights be protected.

The cases upon which Petitioner relies fall into one of the above three categories, but none present, as does Respondent's facts and circumstances, a purely *Mathis*-type case.

In the first category of cases, in which the defendant was **not in custody**, *United States v Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999), falls. Ozuna was being questioned by customs and immigration agents as he was trying to enter the United States. The Sixth Circuit held that routine questioning did not require the advice of rights. Some further restriction on one's freedom was necessary before *Miranda* applied. This was a non-inmate and a not-in-custody case.

The second category of cases involves **inmate-initiated** conversations. In *United States v Willoughby*, 860 F.2d 15, 24 (2nd Cir. 1988), the inmate was talking voluntarily to an old girl friend who had, unbeknownst to him, agreed to wear a wire. The Second Circuit relied upon the fact that the conversation was voluntary to affirm the conviction. In *Leviston v Black*, 843 F.2d 302 (8th Cir. 1988), the defendant while incarcerated on a misdemeanor called the police and asked to speak to officers about a robbery. Likewise, in *United States v Turner*, 28 F.3d 981, 983 (9th Cir. 1994), the defendant, in jail on unrelated state charges, called the postal agent and asked him questions about the investigation and then answered a few himself. The Ninth Circuit found that the conversation was voluntary and that Turner was not in custody for *Miranda* purposes.

The third category concerns cases where prison guards are conducting on the scene

questioning. Into this category falls *Cervantes v Walker*, 589 F.2d 424, 427 (9th Cir. 1978). During a routine search of prisoner's belongings, an officer found marijuana. He found the inmate in the prison library and spontaneously asked "What's this?" The Ninth Circuit in finding *Miranda* inapplicable held that incarceration does not *ipso facto* make an interrogation custodial when one is already incarcerated.

Similarly in *United States v Conley*, 779 F.2d 970, 973 (4th Cir. 1985), an inmate, possibly injured during an assault, was in a conference room waiting to see medical staff. The prisoner initiated the conversation with the guard by asking, "What's going on?" The Fourth Circuit agreed with *Cervantes* that a prison inmate is not automatically in custody within the meaning of *Miranda*.

> ... otherwise [requiring warnings] would seriously disrupt prison administration by requiring, as a prudential matter, formal warnings prior to any of the myriad informal conversations between inmates and prisoners which may touch on past or future criminal activity and which may yield potentially incriminating statements useful at trial.

The Court also noted that such a requirement would provide greater protection to prisoners than to their non imprisoned counterparts.

Likewise, in *Garcia v Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994), an officer observed a fire in a cell. He removed the inmate, doused the flames, and then asked Garcia why he set the fire. Pursuant to *Cervantes*, the *Garcia* Court found that *Mathis* did not impose a per se rule because inmates would have greater rights than non-inmates and because the inmates freedom of movement was not further diminished (reasonable person standard); *United States v Scalf*, 725 F2d 1272, 1275 (10th Cir. 1984)(*Miranda* did not apply to on the scene questioning of an inmate after the inmate was locked in his own cell and the officer stood outside it and asked about the assault).

There is one last category of distinct cases and this one was not discussed in *Miranda*. It contains those cases where the inmate is in custody serving a sentence and is questioned about conduct occurring outside the prison and unrelated to the offense on which time is being served. *Mathis* is the archetype for this fourth category. In *Mathis*, the defendant was interrogated by agents of the IRS while he was serving time in a state institution. Without benefit of *Miranda* warnings, the

agents obtained the defendant's written consent to extend the statute of limitations, a sure sign the agents were interested in a prosecution. They then proceeded to ask incriminating questions of Mathis. The Court found that this was not just a routine tax investigation. It also found unpersuasive the argument that because the interrogating officers had not jailed the defendant, *Miranda* did not apply. In rejecting the latter argument, the Court specifically noted that such a distinction went against the whole purpose of *Miranda*.

> In speaking of 'custody' the language of the Miranda opinion is clear and unequivocal:
>
> > 'To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized.' 384 US at 478.

Mathis at 5.

The Petitioner cites to three other cases which at first blush appear to fall into this last category in that the inmates to be interrogated were in-custody serving time on other offenses: *Alston v Redman*, 34 F.3d 1237 (3rd Cir. 1994), *United States v Menzer*, 29 F.3d 1223 (7th Cir. 1994), and *Georgison v Donelli*, 588 F.3d 145 (2nd Cir. 2009). But as will be shown these cases are easily distinguishable from Respondent's and should more properly be placed in one of the other three categories.

In *Alston v Redman*, the inmate was actually advised of his rights before two separate interrogations. But in between the two, he met with a public defender and signed a document stating that he would only be interviewed with a lawyer present. There is some question about whether this document was ever transmitted to the warden. So the major issue here was the admissibility of the second statement under *Edwards v Arizona*[1]. Thus the inmate was in custody and was read his rights. *Miranda* was complied with.

In the second case, *United States v Menzer*, the inmate was in prison on an unrelated crime. He was at a facility where it was generally understood that one did not have to meet with law

---

1 451 US 477 (1981).

enforcement officers. Before the meeting, the officers faxed the inmate the questions they would ask so that the defendant could decide if he wanted to meet with them. They also told him he was free to leave at any time, that he could terminate the interview at any time, and that the door to the interview room was not locked. The Seventh Circuit affirmed the conviction. This inmate was in a sense empowered by the lengths the officers went to assure that their meeting was a voluntary meeting to start with. Apparently, he could even have refused to meet with them by fax. Thus, although the meeting was not initiated by the inmate, the above described circumstances can only lead to the conclusion that the inmate entered into the meeting knowingly and voluntarily. A voluntary statement is a well-recognized *Miranda* exception.

It is the third case, *Georgison v Donelli*, upon which Petitioner most heavily relies for this Court to make a finding that there is a conflict among the Circuits. Georgison was in prison on a robbery conviction when detectives came to the facility to interview him about a three-year old assault charge. As in *Menzer*, there was no requirement at the facility that inmates speak with law enforcement personnel. The corrections officer asked Georgison if he was willing to talk with police detectives. He consented. The interview was held in the visitors room of the prison. The corrections officer waited outside the room while the conversation occurred. The *Miranda* rights were not administered. During the interview, the inmate unknowingly made some admissions. He was offered the opportunity to become "a rat" to which he took umbrage. He immediately terminated the interview and walked out of the room. The Second Circuit held that the interview was not an in-custody interview.

> ...we conclude that the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here. There was no 'measure of compulsion above and beyond that inherent in custody itself,' ... Georgison was not 'subjected to restraints comparable to those associated with a formal arrest,' ....

Georgison at 157 (internal citations omitted). In rejecting Georgison's argument that there was a per se rule, the Second Circuit relied on *Illinois v Perkins*, 496 U.S. 292 (1990). But that case involved an unsuspecting inmate chatting away with an undercover officer. The *Mathis* rule depends on the inmate knowing that he is being interrogated by officers. That is part of the coercive atmosphere.

The Second Circuit found *Miranda* inapplicable because there were no restrictions on the inmate's freedom over and above ordinary prison confinement, he consented to the interview, and the interview was conducted in a visiting room. Thus there was no coercive pressure brought to bear that tended to undermine Georgison's will or to compel him to speak. This was supported by the fact that Georgison left the visiting room at a time and in a manner of his own choosing. *Georgison* really belongs in the first category of cases where the suspect consents to the interview.

The circumstances of Respondent's case place him firmly in the fourth category. Respondent was serving time on a misdemeanor conviction. Testimony elicited from Detective Batterson at the preliminary examination was relied upon by the trial court in its decision on the motion to suppress the statement. Batterson testified that he had Defendant's jailers take him out of his cell and bring him to a conference room on a different floor in the main part of the Sheriff's Department, away from the jail. He was dressed in jail oranges. The detective admitted that Defendant could not have just gotten up and walked out of the room. He would have had to wait until a corrections officer came to escort him back to the cell. (Res. App. Preliminary Examination Transcript 12a-18a).

At the evidentiary hearing on the motion to suppress the statement, Defendant testified that knew he could not freely leave the room. He was frightened of Detective Batterson. He did not know how to get back to his cell from the conference room and the door was locked. (Pet. App. Transcript of Hearing 67a-77a). Both Batterson and Detective Sharp were armed. (Pet. App. Transcript of Hearing 74a).

The Defendant estimated that the interrogation lasted about seven hours. When defendant asked to leave it took 20 minutes for a corrections officer to arrive to return him to his cell and during that time he was still being questioned. (Pet. App. Transcript of Hearing pp 89a-93a).

The session ended at least three hours after he would normally be asleep. He was concerned during the interrogation that he had missed taking his medication at 10:00pm. The petitioner had a kidney transplant and needed to take Prograf (sp) and Cellcept, which are anti-rejection drugs and also Paxil, a medication for depression. Upon returning to his cell, he was told that he could not be

given these medications because it was too close in time to his 5:00am meds. (Pet. App. Transcript of Hearing 77a-80a).

At trial Detective Batterson on cross examination admitted that the interrogation started at either 7pm or 9pm and lasted until 1:00am or 2:00am. The supposed confession occurred near the end of that time period. Earlier in the interrogation, the defendant became upset. The Deputy told him he could leave but never got someone to take him back to his cell. (Pet. App Trial Transcript, Batterson 122a-126a).

Deputy Dale Sharp, in training with Detective Batterson, remembered that the interrogation started probably at 6:00pm in the evening and lasted about 7 hours. (Pet. App Trial Transcript, Sharp 127a-130a). Defendant was not told that he could refuse to talk with the Detectives. (Pet. App. Trial Transcript, Sharp 135a).

These facts support not only a finding of coercion where *Georgison* does not, but also a finding that the requirements of *Miranda* applied. Unlike Georgison, the Respondent was removed from his normal surroundings and taken to an area of the Sheriff's Department with which he was not familiar. Unlike Georgison, he was never informed by anyone that he could refuse to talk with detectives. Unlike Georgison, the people interrogating him were armed. Unlike Georgison, he was not interrogated in a visitor's room. Unlike Georgison, he could not get up and leave and his request to end the interrogation was not honored. Unlike Georgison, he was in danger of organ rejection if he didn't take his meds on time.

Prison visiting rooms are large. They are also much more open than an interrogation room. Except for the outside walls of a visiting room, the other are glassed so that guards can observe what is transpiring in the room. Thus the inmate is not hidden away from the prison population and may experience a greater sense of relief at not being cooped up. This is a much less coercive environment than an interrogation room or the conference room in a different area of the Sheriff's Department.

The description of the conference room is not much different from a standard interrogation room, except for the large conference table and the wipe board. Respondent was still removed from

the general prison population. He was still in a room at the mercy of his interrogators. His freedom of movement was restricted to that one room and he knew he could not leave that room without an officer escorting him back to his cell. He knew in fact that there was at least one, if not two, locked doors through he would have to pass to get back to his cell. If it had been possible to leave that room under his own steam, could he even find his way back to his cell from the unfamiliar place he was now in? What would happen if he was found wandering that section of the Sheriff's Department? Would he be accused of attempting to escape? Or would he just receive an "out-of-place" ticket? Even if the door to the conference was unlocked so Respondent could leave that room under his own steam, would the interrogating officers report that he was loose?

Petitioner contends that the case at bar is factually distinct from *Mathis* because Mr. Fields is highly educated, he was aware that a criminal matter was being investigated, and repeatedly told that he could leave the interview whenever he wished. (Pet. Brief 30). While Mr. Fields is educated, he has never been to law school. His area of expertise is social work, not law. There were no facts from which to infer what Mathis' education level was. He was educated enough to have the kind of tax problems that interest the IRS. There is no *Miranda* exception for people that are college graduates. Respondent was not repeatedly told he could leave the room. He, in fact, knew he was not free to leave with a locked door separating him from the rest of the jail. When he did finally ask to leave, it took 20 minutes for a deputy to arrive to escort him back to his cell, a time period in which Respondent was still being questioned.

The facts relevant to whether the advice of rights must be given are the same here as they were in *Mathis*. The inmate was being questioned about criminal conduct unrelated to the reason that landed him behind bars in the first place. He had been removed from the general prison population. His freedom of movement was further restricted during the time of the interrogation.

In the three cases Petitioner contends are *Mathis*-type cases, the *Miranda* Court itself said that the warnings would not be applicable. In one, *Miranda* rights were given. In the second, *Menzer*, the officers did everything they could to make the meeting with the inmate as non-coercive as

possible. As the court noted there were no added impositions on his freedom of movement nor any measure of compulsion beyond his imprisonment. *Menzer* at 1232. In the third case, *Georgison*, the location of the conversation was in a less coercive atmosphere than the prison proper because the room was frequented by the non-inmate public and the inmate was told he did not have to talk to the officers and was asked by corrections officer, not the interrogators, if he would consent to the interview. These cases offered by the Petitioner are just not on point with the case before this Court.

Randall Fields did not volunteer his confession nor was he subjected to on-the-scene questioning, two situations to which *Miranda* does not apply. His freedom of movement was been further restricted when he was removed to a conference room. He was not informed that he could refuse to speak with the officers. Thus he did not consent to the interrogation. He was in-custody for *Miranda* purposes.

The cases cited by Petitioner do not support the argument that there is a conflict among the Circuits. These cases only serve to highlight how egregious and objectively unreasonable was the decision of the Michigan Court of Appeals.

B. The Sixth Circuit Court of Appeals decision falls squarely within clearly established Supreme Court law. The bright line rule imposes no new legal obligation on the States and on the Federal government.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) amended the habeas statute found at 28 USC 2254. Subsection (d) of the statute states, in pertinent part, that an application for a writ of habeas corpus challenging a state court conviction may only be granted if the petitioner shows that the proceeding

> 1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;

Under this section of the statute, it is up to the Court to determine if a particular decision has really announced a new rule or whether it simply applied "a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered in the prior case law." *Williams v Taylor*, 529 U.S. 362, 381 (2000). Rules which break new ground or impose

new obligations on the States or on the Federal government fall outside the rubric of "clearly established Federal law." Thus the *Williams* Court noted that if the Supreme Court "has not broken sufficient legal ground to establish an asked-for constitutional principle, the lower federal courts cannot themselves establish such a principle... ." *Id.*

In the case at bar, Petitioner argues that a bright line rule as applied to the question of Mirandizing prisoners is not clearly established federal law. However, the bright line rule is based on the well established legal principle announced in *Mathis* and imposes no new obligation on the States or the Federal government that it did not have before the decision in the instant case. An inmate removed from the general population and questioned about conduct occurring outside the prison must be advised of his rights ever since the decision in *Mathis, supra.*

To illustrate its argument, Petitioner cites to *Carey v Musladin*, 549 U.S. 70 (2006), and *Wright v Van Patten*, 552 U.S. 120 (2008) to argue that the Sixth Circuit went beyond the right created by this Court's clearly established law. But Petitioner will find little support in those cases where principles expressed by this Court were modified by the Courts of Appeals to apply to the case before them.

In *Musladin*, the Ninth Circuit, relying on *Estelle v Williams*, 425 U.S. 501 (1976)(defendant forced to wear prison garb by the State denied a fair trial), held that where family members wore buttons with photos of the deceased at defendant's murder trial he was denied due process. In reversing this decision, the Supreme Court noted that the *Estelle* case applied only to government-sponsored conduct, not to private conduct.

In *Wright*, this Court reversed a Seventh Circuit decision which had extended the holding in *United States v Cronic*, 466 U.S. 648 (1984)(Prejudice prong of *Strickland* not applicable to complete absence of counsel) to instances where counsel is physically absent but participates via speakerphone. This Court noted that no precedent addressed the presence of counsel over a speakerphone.

Here, no principle had to be modified or extended by the Sixth Circuit to reach the decision

it did. The *Mathis* Court's holding that prisoners were in custody for *Miranda* purposes has been clearly established Supreme Court law since 1968. In arriving at its decision, the *Mathis* Court rejected the Government's attempt to narrow the scope of *Miranda*:

> The Government also seeks to narrow the scope of the Miranda holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights.

Id. at 4. The Court went on to note that nothing in *Miranda* calls for curtailment of the warnings solely because one is already in custody. *Id.* at 4-5.

As the majority of the panel in Circuit Court pointed out in its opinion in this case, a bright line rule only makes it easier to apply the clearly established Federal law. Pet App. 18a-20a. So not every bright line rule is new law.

In this case, the State courts had before it a case in which the prisoner was clearly in custody and yet it refused to follow the dictates of *Miranda* and *Mathis*. The Petitioner cannot point to any clearly established Supreme Court law which would permit such an omission. The State court's refusal to follow clearly established Supreme Court law was contrary to and an unreasonable application of the holdings in *Mathis* and *Miranda*.

In this case, the Sixth Circuit Court of Appeals made no extension of existing law to reach the decision it did. It simply applied *Mathis* and found that the state court decision was contrary to it.

C. Even without resort to a bright line rule, the Respondent's conviction must still be vacated under 28 USC 2254(d)(2) because the State court decision was based on an unreasonable determination of the facts in light of the evidence presented to it.

The State court's decision also resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. 28 USC 2254 (d)(2). This latter subsection, does not contain the limiting language of subsection (d)(1) in regard to "clearly established Federal law as determined by the Supreme Court of the United States."

The Sixth Circuit's decision can be affirmed under the former subsection as well as the latter because regardless of any bright line rule, on the fact of this case *Mathis* required that Respondent be advised of his rights before he was interrogated.

Whether a person is in custody for Miranda purposes is a mixed question of law and fact. Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 US at 444. (Emphasis added). On this issue, the only relevant inquiry is whether a reasonable person in the suspect's position would have felt that he was free to leave. *Yarborough v Alvarado*, 541 U.S. 652, 662-663 (2004); *Berkemer v McCarty*, 468 U.S. 420, 442 (1984). This is an objective test based on the circumstances of the interrogation. *Stansbury v California*, 511 U.S. 318, 322-324 (1994). A state court determination as to whether a suspect was "in custody" for *Miranda* purposes is not entitled to the statutory presumption of correctness on federal habeas corpus review. It is a mixed question of law and fact warranting independent review. *Thompson v Keohane*, 516 U.S. 99 (1995).

In the case at bar, the trial court, which improperly put the burden of proof on defendant, held that because the officers told defendant he was free to leave, he was not in custody for *Miranda* purposes. (Res. App. Transcript of Decision on Defendant's Petition to Quash the Information and Suppress the Statement 8a). The Michigan Court of Appeals described the facts of the case as follows:

> At trial, Deputy Batterson testified that he removed defendant from his cell, where he was jailed on domestic assault, and led him to a conference room. He told defendant that he wanted to speak with him in regard to the victim whom defendant indicated he knew. The interview began around 7:00 or 9:00 p.m. and ended around midnight. Defendant was not read his *Miranda* rights, but Deputy Batterson told him he was free to leave the conference room and return to his jail cell. Deputy Batterson told defendant that there had been allegations of a sexual nature involving the victim. Defendant stated that he was a fatherly figure to the victim. Although defendant did not initially acknowledge any sexual relations, he ultimately stated that he had oral sex with the victim and masturbated him.

(Pet. App. State Court of Appeals Opinion 54a-55a).

The state appellate court concluded:

> Here, defendant was unquestionable in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because Miranda warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

(Pet. App. State Court of Appeals Opinion 56a). This finding was an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

In analyzing the facts of this case, it is clear that the encounter was neither voluntary nor was it on-the-scene questioning. Fields was clearly in custody at the time of the interrogation and not just because he was serving time on a disorderly conduct conviction. For *Miranda* purposes, he was further deprived of his freedom of movement in a significant way. The detectives had him removed from his cell and removed from the jail area. He was taken to another floor and through a locked set of doors and deposited in the administrative area of the Sheriff's Department. This occurred in the evening. The detectives stayed well past midnight and well past the time at which the Petitioner would have gone to sleep. The interrogation lasted between 5-7 hours, an extraordinary length of time. Voluntary, enjoyable social gatherings don't even last that long. (Counter Statement of Facts 5-6).

Fields could not freely leave the location he was in with the two detectives. He would have needed an escort to return to his cell. The statement that he could leave the conference room was not honored when he did try to leave. He had become upset and asked to leave, but the detectives neither got him an escort nor left the room. Questioning was done for the purpose of obtaining incriminating statements. His admissions only occurred near the end of a five to seven-hour interrogation period. (Counter Statement of Facts 6).

Most significantly on the issue of whether defendant felt free to leave is the fact that the time for taking his anti-rejection medicine had passed and yet the defendant did not feel he could leave the interrogation room to take these important medications. (Counter Statement of Facts 5).

The two detectives held the defendant for seven hours, until they got the incriminating

statement that they came for. They removed the defendant from his cell. They isolated him from the other prisoners. They did this at a time and in a location where there would be less foot traffic. They did this at a time and for a length of time during which the defendant would not be as mentally alert as his interrogators. They created a coercive atmosphere. The constitutionally mandated *Miranda* warnings were not given.[2]

The instant case falls squarely within the ambit of *Mathis* because the defendant was in custody at the time he was interrogated and he was removed from the general prison population. The State court's determination of the facts was unreasonable in light of this evidence.

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2 *Dickerson v United States, supra.*

CONCLUSION

The petition for a writ of certiorari should be denied and the decision of the Sixth Circuit Court of Appeals should be affirmed.

Alternatively, if this Court grants the petition in Sheets v Simpson, Case No. 10-458 and is inclined to grant the petition in this case, Respondent asks that his case not be held in abeyance but that this Court accept a merits brief and allow oral argument

Respectfully submitted,

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DATED: December 15, 2010

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246041

STATE OF MICHIGAN

39TH JUDICIAL CIRCUIT COURT, LENAWEE COUNTY

THE PEOPLE OF THE STATE OF MICHIGAN,

v

RANDALL LEE FIELDS,

Defendant.

File Nos. 02-9738 FC
02-9739 FH
02-9749 FC
02-9750 FC

FILED
FEB 16 2007
CLERK'S OFFICE
DETROIT

DEFENDANT'S PETITION TO QUASH
INFORMATION AND SUPPRESS STATEMENT

BEFORE THE HONORABLE HARVEY A. KOSELKA, CIRCUIT JUDGE

Adrian, Michigan - Monday, October 21, 2002

FILED
39th CIRCUIT COURT
APR 21 2003
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FIRST DISTRICT

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Adrian, Michigan

Monday, October 21, 2002 - 11:35 a.m.

[Tape 1; 10-21-02; 11:35:20]

THE COURT: Eleven o'clock call. People versus Fields.

MISS SCHAEDLER: My half's here.

THE COURT: Keep going. Can I have the rest of them please?

COURT REPORTER: I'm sorry.

MISS SCHAEDLER: Your Honor, I haven't seen Miss Tate. I don't know if she's--

DEPUTY CHRYST: She's in the hallway.

(At 11:36 a.m., Miss Tate and Defendant Fields enter the courtroom.)

THE COURT: Would counsel identify themselves for the record please?

MISS SCHAEDLER: Laura Schaedler on behalf of the People.

MISS TATE: Karen Tate on behalf of Mr. Fields, your Honor.

THE COURT: The record should show that Mr. Fields is there. Miss Tate, you may proceed.

MISS TATE: Your Honor, in this particular case, I know it wasn't before this Court, there was some testimony taken earlier in regards to what occurred when Officer

Batterson took Mr. Fields out of his cell and took him out to a front conference room out--out of the jail part of the sheriff's department into the main office section of the sheriff's department. And Mr. Batterson indicates that my client made certain statements at that time. It is our position that those statements should be suppressed at the trial in this matter as being in violation of my client's constitutional rights because--

[Tape 1; 10-21-02; 11:37:57]

THE COURT: Was he being questioned by the officer at the time?

MISS TATE: Yes, he was being questioned by the officer, specifically being taken out to be questioned by the officer on these events, and that's what he was being questions about was these events.

THE COURT: Anything further on this issue?

MISS TATE: And he was not mirandized.

THE COURT: Anything further on this issue?

MISS TATE: No, your Honor.

THE COURT: Ms. Schaedler

MISS SCHAEDLER: Your Honor, the defendant was incarcerated at that time on a case unrelated to this matter, in fact, in a domestic assault. And I believe if the Court reviewed our answer and the two cases cited in that answer, you have to show not only that he was incarcerated and being

questioned, but rather that there's a nexus between the incarceration and the interview, and there was none. He was in jail on a domestic assault. They removed him and took him to a conference room in the office part of the jail, and pursuant to those two cases, we are not required to read Miranda to him, and they have to show more than just he wasn't mirandized. They have to demonstrate that it wasn't an involuntary interview; and as a matter of fact, the most recent case law puts the onus on them; and they haven't demonstrated that.

[Tape 1; 10-21-02; 11:38:09]

THE COURT: The incarceration was something totally unrelated to these people, the victims in this case.

MISS SCHAEDLER: That's correct. It's on a domestic assault involving someone who lived in his home and actually a co-defendant in many of these cases.

THE COURT: Ms. Tate, we're back to your court.

MISS TATE: Your Honor, we've cited various case law. We believe the prosecutor's wrong in what she's stating. One of the cases she cited involved a gentleman who was taken out of a cell to be questioned about a case in which he was not a suspect, never became a suspect. He was a witness. He later on went on the stand and testified untruthfully on the stand and was then prosecuted for perjury. That's unrelated to this particular case.

Under this particular case, my client was taken out of tho cell 'cause he was in a cell there, and it wasn't a custodi--it wasn't an interrogation in his cell as it was in another case cited by the prosecution. This he was taken out, taken to another place where he was not simply allowed to leave. He had to call for assistance to leave. He was questioned. You can't say just because somebody's arrested and we want to question you, you're not entitled to Miranda. In this case, he was taken out to the front of the jail, he was placed under questioning by the officer about this specific incident. He was entitled to his Miranda Rights. He was entitled to know he could terminate this questioning at any time. He was not afforded those rights, so we believe the matter should be suppressed. We have cited our case law, and I believe ours is appropriate, your Honor.

[Tape 1; 10-21-02; 11:39:38]

THE COURT: Ms. Schaedler, do you expec--do you challenge the factual basis set forth by Miss Tate in her claim, that he was actually taken out for the purpose--taken out of his cell, taken to the front of the--taken someplace else in the jail to be questioned about the events of this particular crime?

MISS SCHAEDLER: No, I do not. He was taken through J door. I think the Judge is acquainted with J door. He was told that he could leave at any time and that he would be

taken back to his cell. And I think the two cases that we cite very clearly indicate that that's not a problem, that you can do that. One, she does indicate correctly that it was on a case where he would have been a witness as it related to an unrelated event, and the other one as to a--an event that did involve him, one was to perjury and one was to one involving him specifically, and both of them talk about the fact that the mere happenstance that he's under custody, and they don't make a distinction about whether it's in a different part of the jail or whether it isn't as long as he has the right to end the interview, which he did, and that was testified to.

[Tape 1; 10-21-02; 11:40:49]

MISS TATE: Your Honor, we would simply cite the Court to the cases of *Roark* in which he was taken--my client's different from that and was taken to a place; also the case of Mayes where we've got a police dominated atmosphere. He is sitting there in this conference room saying, oh, when you're ready to leave, you can leave; but it's been testified he would've had to--they had to call assistance to him to let him leave. He couldn't just get up and walk out of this conference room, you know, and it was a totally police dominated atmosphere. It was totally for purposes of questioning on this--these particular incidents and these two cases that we are talking about, actually four files. And we believe you can't just say, well, he's arrested on something

else, so we've got a free shot at him, we don't have to give him Miranda or anything else. We believe he should have been mirandized in this case.

[Tape 1; 10-21-02; 11:41:37]

THE COURT: All right. In this particular case he was free to leave, he was told that he was free to leave, and granted it might have taken a couple of minutes for that to be done. He knew that he could do this. The defendant does have the burden on this. The motion is denied.

MISS SCHAEDLER: Thank you, your Honor.

MISS TATE: Thank you, your Honor.

THE COURT: Anything else, Miss Tate?

MISS TATE: Nothing further, your Honor.

(At 11:42 a.m., proceedings concluded.)

[Tape 1; 10-21-02; 11:42:05]

STATE OF MICHIGAN)
) ss
COUNTY OF LENAWEE)

I certify that this transcript, consisting of 8 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on Monday, October 21, 2002.

Dated: April 18, 2003

Patricia J. Szymanski, CER-3118
Rex B Martin Judicial Building
425 North Main Street
Adrian, MI 49221
(517) 264-4746

42

STATE OF MICHIGAN

2-A JUDICIAL DISTRICT COURT, LENAWEE COUNTY

02-973 FC

ORIGINAL

THE PEOPLE OF THE STATE OF MICHIGAN,

v

RANDALL LEE FIELDS,

Defendant.

File Nos. 02-0451-FY
02-0452-FY
02-0453-FY
02-0454-FY
02-0661-FY

FILED
FEB 16 2007
CLERK'S OFFICE
DETROIT

CONTINUATION OF PRELIMINARY EXAMINATION

BEFORE THE HONORABLE NATALIA M. KOSELKA, DISTRICT JUDGE

Adrian, Michigan - Tuesday, March 12, 2002

FILED
29th CIRCUIT COURT
APR - 8 2002
LOU ANN BLUNTSCHLY
LENAWEE CO CLERK ADRIAN MI

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Randall Lee Fields v. Carol Howes
USDC #2:06-CV-13373

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EXHIBITS:

NONE

THE COURT: You may call your next witness.

MISS SCHAEDLER: We would call Deputy Batterson to the stand.

THE COURT: You want to raise your hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

DEPUTY BATTERSON: I do.

DAVID BATTERSON

called by the People at 3:18 p.m., sworn by the Court, testified:

DIRECT EXAMINATION

BY MISS SCHAEDLER:

Q Would you please state your full name and place of employment for the record?

A David Batterson, Lenawee County Sheriff's Department.

Q And Deputy Batterson, as a result of your employment, did you have reason to come in contact and interview a Randall Lee Fields?

A Yes, I did.

Q And was he incarcerated at that time?

A Yes, he was.

Q And did you read him his Miranda Rights prior to the discussion?

A I did not.

Q Had he been read his Miranda Rights?

A No. He was in custody on an unrelated matter.
Q Okay, and as it relates to the interview that you had, was he free to get up and leave the interview room?
A Yes, he was.
Q As it relates to that, did he at some point acknowledge to you that he had had sexual relations--

MISS TATE: Objection, Your Honor. First of all, the mere fact he may have, y'know, we're trying to say this guy was free--he's an arrest--he's under arrest, he's in the jail, but he's free to leave when he wants. Y'know, obviously this is an impermissible statement, and second, they cannot establish the elements of the crime at preliminary exam based upon statements and non-direct evidence. First, we believe it's inadmissible, and he had no Miranda Rights given to him. He was not free to leave. Obviously you're in a custodial setting when you're in a jail and an officer comes to talk with you, and you can say, well, oh yeah, he could've left the room at any time. I don't believe that quite makes the standard, Your Honor.

MISS SCHAEDLER: I believe it does, Your Honor. I believe the case law supports the fact that when they're--even if they're incarcerated when they're not incarcerated on the particular charge involved that they're in a separate room and they have the right to say they want to go back to their cell that they can be considered--that the statement is admissible,

number one. And number two, it does--it does not have to--as long as we've established a corpus through the testimony of Mr. Bice, we can use the statement of Mr. Fields.

THE COURT: From what I remember of the law too, this--if he was able to leave and he just started talking about something and he could go--he could have stopped and said he wouldn't talk about anything. I'm going to allow the prosecutor to proceed.

MISS SCHAEDLER: Thank you, Your Honor.

BY MISS SCHAEDLER:

Q During the course of that interview, did Mr. Fields acknowledge that he'd in fact had sexual contact with Mr. Bice?

A Yes, he did.

Q And when did he indicate that this sexual contact began?

A In August of 2001.

Q Okay, and what kind of details was he able to give to you?

A He stated that in August 2001 Travis Bice was in his bedroom masturbating with a tool, and he aided him in masturbating Travis Bice with that tool.

Q Okay, and subsequent to the August 2001 event where there was the masturbation with the tool, did Mr. Bice indicate whether or not he'd ever had sexual contact with Mr. Bice?

A Prior to that he stated that he did not, but he did observe Travis Bice having--

Q Subsequent, the question is.
A Oh, I'm sorry.
Q Subsequent to the August 2001 event where Mr. Fields assisted Mr. Bice in masturbating, did Mr. Fields acknowledge having had sexual contact with Mr. Bice?
A No, he did not.
Q He never acknowledged having sex with Mr. Bice after the August 2001 date?
A Oh, yes, he did. I'm sorry, I didn't understand your question.
Q And what if anything did he acknowledge?
A He stated that in September of 2001 he had oral sex with Travis Bice where he placed his penis in Travis Bice's mouth and Travis Bice placed his penis in his mouth, and they performed oral sex on each other.
Q Is that the only time he indicated there was ever oral sex?
A No, there was another incident in November in Toledo, Ohio.
Q Okay, and was there any other incident that he described to you as having taken place here in the County of Lenawee?
A No.
Q How did he describe his relationship with this young man?
A They were friends, and he was more a father-type figure offering advice and counsel to Travis Bice.
Q And that was from Mr. Fields himself?
A Yes.

MISS SCHAEDLER: I have no further questions.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MISS TATE:

Q You indicated that Mr. Fields was in jail on a separate matter, is that correct?

A Yes, that's correct.

Q And you pulled him out of his--had the jailers take him out of his cell and bring him to a room to be talked--to talk with you, correct?

A Yes, I requested that he--

Q Where was this room located that you discussed with him these incidents?

A This is the conference room in the main portion of the sheriff's department. It's away from the jail area.

Q Okay, you're talking about where the offices and things are.

A Yes.

Q Basically if I'm not mistaken, that's just off Larry Richardson's office.

A Yes.

Q Would he be ab--did you tell him he could get up and leave any time he wanted?

A I did.

Q What would have been the process he would have had to go through to get up and leave?

A Just request that he'd like to leave, and at that point I would have had a corrections officer take him back to his cell.

Q Could he have just got up and walked out of the room at any time he wanted?

A Not at that point, no. He would have had to remain until a corrections officer came to escort him back to the cell.

Q So he wasn't just free to get up and walk out of the room at any point in time?

A No. It's not a secure area.

Q And I would assume--was he wearing the usual chains and stuff when he was over there, or was he over there--

A No, he was not.

Q Okay, was he wearing the jail oranges?

A Yes.

Q And you did not at any time or point give him his Miranda Rights?

A No, I did not.

Q The only thing you told him if you want to leave, you can leave.

A That's correct.

MISS TATE: Nothing further, Your Honor.

MISS SCHAEDLER: I have nothing further at this time, Your Honor.

THE COURT: All right, thank you. You may step

down.

(At 3:24 p.m., witness steps down.)

MISS TATE: Your Honor, we would renew our objection to the use of the statements.

THE COURT: All right.

(At 3:24 p.m., Miss Schaedler confers with Deputy Batterson.)

MISS SCHAEDLER: One moment, Your Honor.

THE COURT: Okay.

(At 3:24 p.m., Miss Schaedler continues to confer with Deputy Batterson.)

MISS SCHAEDLER: Your Honor, we would call to the witness stand Walter Dudock.

MR. DUDOCK: Where?

MISS SCHAEDLER: Right up there.

DEPUTY PAYNE: Right up here.

THE COURT: You want to raise your hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. DUDOCK: Yeah.

WALTER ANDREW DUDOCK

called by the People at 3:25 p.m., entered the courtroom, sworn by the Court, testified:

DIRECT EXAMINATION

BY MISS SCHAEDLER:

REPLY BRIEF

DEC 2 9 2010
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No. 10-680

In The
Supreme Court of the United States

CAROL HOWES,
Petitioner,

v.

RANDALL FIELDS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF

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INTRODUCTION

In this habeas case, the United States Court of Appeals for the Sixth Circuit expanded *Miranda*'s requirements – creating a new rule that this Court has never established – which afforded prisoners with broader protections than citizens who are not incarcerated. Respondent's arguments against this Court granting the petition fail for three primary reasons.

First, this Court has never established as a "bright-line" test that *Miranda* warnings must be given whenever a suspect who is incarcerated is questioned away from the general prison population about conduct that occurred outside the prison. Respondent candidly acknowledges that this is a bright-line rule and proffers only that it is based on "legal principles" – not any specific *holding* of this Court. Never has this Court held that in such situations the surrounding circumstances do not matter. That is exactly what the Sixth Circuit did here when it created a per se rule.[1]

Moreover, because this Court has never held that this rule applies, the Sixth Circuit's new test cannot be considered clearly established federal law under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). A State court's opinion cannot be contrary to or an unreasonable application of a rule that does not exist. Respondent's claims that the Sixth Circuit's novel bright-line test fits "squarely" in clearly established precedent is unpersuasive in light of the

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[1] The Sixth Circuit employed the same approach in *Simpson v. Jackson*, 615 F.3d 421 (6th Cir. 2010). The State of Ohio has filed a petition for certiorari in *Simpson* (Case No. 10-458).

lack of a holding from this Court. The State court opinion here was not contrary to clearly established federal law.

Second, Respondent's attempt to distinguish and minimize the Circuit split on this jurisprudentially significant issue is unavailing. Respondent's effort to factually distinguish the cases from the other circuits highlights the fact that there is no per se rule. The Sixth Circuit's novel blanket rule has created an active split in the circuits on the issue presented here. No other circuit has created this rule. In fact, two circuits are directly in conflict.

Third, Respondent's focus on selected, disputed factual points surrounding the interview only emphasizes that there is no per se rule. Respondent's characterizations of those facts are not supported by the record. Moreover, the State court opinion was not an unreasonable determination of the facts in light of the evidence under AEDPA.

This Court should grant the petition.

ARGUMENTS

I. Respondent implicitly acknowledges that clearly established precedent does not establish a bright-line rule.

Respondent does not point to any holding of this Court that mandates that *Miranda* warnings be given whenever a prisoner is questioned away from the general prison population about conduct that occurred outside the prison. The Sixth Circuit's novel bright-line test is not established by this Court's holding in *United States v. Mathis*.[2] *Mathis* established no such rule. Rather, *Mathis* only held that *Miranda* generally applies to prisoners – rejecting the argument that *Miranda*'s holding should never apply to prisoners serving a sentence for an unrelated offense because they are not being held in custody for purposes of questioning.

Miranda held that the Fifth Amendment's privilege against self-incrimination also protects individuals from the "informal compulsion exerted by law enforcement officers during in-custody questioning."[3] The protection applies only when the suspect is "in custody."[4] In *Thompson v. Keohane*, this Court determined that whether a person is in custody is context specific – considering (1) circumstances of the interrogation and (2) whether a reasonable person would have felt able to end the interrogation and leave.[5] According to *Stansbury v. California*, all the

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[2] *Mathis v. United States*, 391 U.S. 1 (1968).

[3] *Miranda v. Arizona*, 384 U.S. 436, 464 (1966).

[4] *See Rhode Island v. Innis*, 446 U.S. 291, 300 (1980).

[5] *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

circumstances are reviewed, and the initial-custody determination is an objective standard.[6]

In *Mathis*, this Court addressed whether *Miranda* warnings apply to a suspect who was incarcerated on an unrelated matter.[7] Neither the government nor the defendant in *Mathis* challenged whether the defendant was in custody for *Miranda* purposes. The government argued, and this Court rejected, that *Miranda* was "applicable only to questioning one who is 'in custody' in connection with the very case under investigation."[8] Specifically, this Court concluded that there was no basis for "curtail[ing]" *Miranda* warnings "based on the reason why the person is in custody."[9]

Since this Court did not reach the issue presented here, the Sixth Circuit was wrong when it held: "The central holding of *Mathis* is that a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated . . . about conduct occurring outside of the prison." Pet. App. 10a. To the contrary, in *Shatzer* this Court stated, "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined

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[6] *Stansbury v. California*, 511 U.S. 318, 322 (1994).

[7] *Mathis*, 391 U.S. at 1.

[8] *Mathis*, 391 U.S. at 4.

[9] *Mathis*, 391 U.S. at 4.

to address the issue."[10] *Shatzer* further underscores the Sixth Circuit's error here.

Respondent unintentionally admits that the Sixth Circuit changed the law and did something new when it applied a new "bright line rule." Resp. Br. pp. 3, 18. Citing the Sixth Circuit's opinion, Respondent argues that "*a bright line rule only makes it easier to apply clearly established Federal law.*" Resp. Br. p. 19 (emphasis added). There is a reason that the Sixth Circuit rule is easier to apply – the court no longer needs to examine the surrounding circumstances to determine if the prisoner is in custody. But that is what makes it a new rule.

A new rule, by its nature, is not clearly established federal law.[11] Nor can an open question form the basis of clearly established federal law.[12] "[I]t is not 'an unreasonable application of clearly established Federal law' for a state court to decline to apply a specific legal rule that has not been squarely established by this Court."[13]

Respondent's claim that the Sixth Circuit's new rule is "clearly established" Supreme Court precedent under AEDPA is unpersuasive in light of this Court's

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[10] *Maryland v. Shatzer*, 130 S. Ct. 1213, 1224 (2010). *See also Illinois v. Perkins*, 496 U.S. 292, 299 (1990) ("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here").

[11] *Williams v. Taylor*, 529 U.S. 362, 381 (2000).

[12] *See Wright v. VanPatten*, 552 U.S. 120, 125 (2008); *Carey v. Musladin*, 549 U.S. 70, 76 (2006).

[13] *Knowles v. Mirzayance*, 129 S. Ct. 1411, 1419 (2009).

jurisprudence on that issue. In *Carey* and *Wright*, there was no holding from this Court requiring the rule the lower federal court applied.[14] Similarly, in *Berghuis v. Smith* and *Renico v. Lett*, this Court rejected the Sixth Circuit's expansion of the applicable rules.[15]

Respondent agrees that if the lower federal court "modified" this Court's precedent, it is not applying clearly established Supreme Court precedent. Resp. Br. p. 18. Here, the Sixth Circuit created a new rule because it has modified the general test from *Keohane* and *Thompson*, in which the court should examine the surrounding circumstances. Since the Sixth Circuit created a new rule, the State court's opinion cannot be contrary to clearly established federal law. And the fact that the other the circuits' decisions diverge is relevant to the inquiry whether there is clearly established federal law.[16] Here, the Sixth Circuit stands alone.

In examining only clearly established Supreme Court precedent, the State court correctly applied the principles of *Miranda* and its progeny to the facts here. Pet. App. 54a-56a. Based on the (1) circumstances of the interrogation and (2) whether a reasonable person would have felt able to end the interrogation and leave, the State court reasonably concluded that Respondent

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[14] *Carey*, 549 U.S. at 77; *Wright*, 552 U.S. at 125-126.

[15] *Berghuis v. Smith*, 130 S. Ct. 1382, 1393-1394 (2010) (noting precedent did not establish which test is required to calculate disparity for purposes of determining a Sixth Amendment fair-cross-section claim); *Renico v. Lett*, 130 S. Ct. 1855, 1866 (2010) (concluding that precedent did not mandate set three-part test for determining whether trial court exercised sound discretion before declaring a mistrial).

[16] *Carey*, 549 U.S. at 76.

was not in custody. The Sixth Circuit erred in holding that the State court opinion contradicted *Mathis*. Pet. App. 20a. The concurring opinion in this case was correct that neither *Mathis* nor *Shatzer* supports a per se rule. Pet. App. 22a-26a.

II. The Sixth Circuit's new rule creates an active split between the circuits.

The case here is indistinguishable from two circuit cases. Respondent's treatment of these cases underscores the fact of a conflict.

For the first case, the United States Court of Appeals for the Second Circuit in *Georgison v. Donelli* applied the fact-specific custody analysis used in *Miranda* cases.[17] In doing so, the Second Circuit flatly rejected that clearly established federal law created a per se rule.[18]

In the face of *Georgison*, Respondent claims that "*Georgison* really belongs in the . . . category of cases where the suspect consents to the interview," and therefore no *Miranda* warnings were required. Resp. Br. p. 14. Respondent's attempt to characterize *Georgison* as a consent case misses the mark. Custody – and therefore whether *Miranda* warnings were required – *was* the question in *Georgison*. If the Sixth Circuit rule were correct, Georgison was in custody and consent to interrogation would not change the fact. And

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[17] *Georgison v. Donelli*, 588 F.3d 145, 157 (2d Cir. 2009).

[18] *Georgison*, 588 F.3d at 156 ("Because the per se rule by Georgison is not clearly established federal law, the state courts here did not unreasonably decline to apply it.") citing *Musladin*, 549 U.S. at 77.

of course, the police must warn under *Miranda* before seeking to obtain a waiver for an in-custody suspect.[19] Accordingly, consent would not alleviate the obligation to provide the warnings under *Miranda*. Because the analysis of the Second Circuit cannot be reconciled with that of the Sixth, there is an unmistakable conflict between the present case and *Georgison*.

Moreover, in attempting to distinguish the case here on the facts, Respondent inadvertently confirms that *Georgison* rejects the bright-line test. Respondent notes that "there was no coercive pressure brought to bear that tended to undermine Georgison's will or to compel him to speak." Resp. Br. p. 14. The same is true here. But in claiming that *Georgison* involved "a less coercive atmosphere" than the case here, Respondent undermines his own argument that a per se rule is the test. Resp. Br. p. 17. An analysis of the surrounding circumstances is only relevant where there is no bright-line test, in contrast to the Sixth Circuit's holding here.

For the second case, Respondent fails to address the case at all, which the State briefed. Pet. pp. 11-12. In *United States v. Ellison*, the United States Court of Appeals for the First Circuit, written by Justice Souter, explained that the restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody."[20] Justice Souter relied on this Court's discussion in *Shatzer*, that *Mathis* did not specifically

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[19] *Miranda*, 384 U.S. at 478-479.

[20] *United States v. Ellison*, 2010 U.S. App. LEXIS 7814 (1st Cir. Apr. 15, 2010).

address the circumstances of custody and why it fell within *Miranda*.[21] But Justice Souter believed that *Shatzer* foreclosed any possibility of a bright-line rule.[22] *Ellison* is squarely in conflict with the Sixth Circuit decision here.

Regarding the other circuit court cases, Respondent misses the point of the State citing those cases. Respondent claims that because those cases involve other exceptions to *Miranda* or different circumstances, they are irrelevant to the question whether there is a split in the circuits. But Respondent cannot dispute the real point that in those cases the circuits rejected a per se rule regarding custody.[23] The fact that the circuits have universally rejected the bright-line rule set forth by the Sixth Circuit in varied circumstances, underscores that no per se rule exists. In fact, the Sixth Circuit did not need to look to the other circuits to see this point. It was in its own precedent.[24]

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[21] *Ellison*, 2010 U.S. App. LEXIS at *7.

[22] *Ellison*, 2010 U.S. App. LEXIS at *7.

[23] *See Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978); *United States v. Conley*, 779 F.2d 970, 972 (4th Cir. 1985); *United States v. Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994); *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984); *Garcia v. Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994); *United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988); *Alston v. Redman*, 34 F.3d 1237, 1245 (3d Cir. 1994); *Leviston v. Black*, 843 F.2d 302, 304 (8th Cir. 1988).

[24] *See United States v. Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999) ("[P]risoners are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been 'a restriction of [the prisoner's] freedom over and above that of his normal prisoner setting.'"), quoting *Cervantes*, 589 F.2d at 428.

III. Respondent's factual assertions only underscore that the proper inquiry requires looking at the surrounding circumstances, and here, such a review supports the State court opinion.

Respondent undermines his argument for the existence of a per se rule when he attempts to characterize and highlight the importance of certain facts surrounding the interview. But Respondent's characterizations are mistaken, and the State court opinion was not an unreasonable determination of the facts in light of the evidence under 28 U.S.C. § 2254(D)(2).

Unlike Respondent's assertions, deputies did not "*extract*[ ] an inculpatory statement." Resp. Br. p. 3 (emphasis added). Nor was Respondent "*deprived* of his freedom of movement in a significant way," beyond the broader context of already being in jail. Resp. Br. pp. 3, 5 (emphasis added). Nor is there any support for any suggestion that Respondent was being deprived of his medications to achieve a confession. Resp. Br. pp. 5, 21. Nor is there any support for the implication that there was a point in time during the interview when Respondent became angry, asked to leave, but no one returned him to his cell. Resp. Br. p. 6.

Rather, Respondent is a man with a bachelor's degree in psychology and a master's degree in counseling. Pet. App. 81a. When Respondent was escorted from his holding cell to a conference room, he was neither shackled nor handcuffed. Pet. App. 67a-69a, 71a-72a. Further, any implication from Respondent that the door to the conference room was locked is incorrect. Resp. Br. pp. 5, 16, 21. The Sixth

Circuit majority misconstrued Respondent's testimony. Pet. App. 3a. Respondent's unremarkable testimony was that the door separating the jail from the administrative offices was locked, not the door to the conference room where he was interviewed. Pet. App. 71a-72a, 91a. This was not an interrogation room, but a well-lit conference room that contained a conference table, chair, desk, and wipe-board. Pet. App. 88a.

Respondent admitted that he "could get up and leave whenever [he] wanted to." Pet. App. 70a-71a. At one point in the interview, following being confronted with the accusations, Respondent became belligerent and was told he could return to his cell. Pet. App. 125a-126a. Even Respondent's version of that event includes that he was told he could leave. Pet. App. 71a, 88a-93a. At that time, Respondent never asked to return to his cell but continued with the interview. Pet. App. 92a-93a, 126a. In fact, Respondent admitted that he believed that a jailer would have taken him back to his cell if he had asked. Pet. App. 92a. Respondent was never physically touched or threatened while interviewed. Pet. App. 88a-89a, 129a.

Respondent never asked to leave the conference room. Pet. App. 124a, 130a. Respondent then admitted to engaging in oral sex with the victim and manually masturbating the victim. Pet. App. 112a-114a, 124a-126a.

The factual circumstances surrounding the interview support the State court's opinion that Respondent was not in custody during the interview. There was no unreasonable application of clearly established Supreme Court precedent.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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Dated: December 2010

PETITIONER'S BRIEF

RECORD
AND
BRIEF

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No. 10-680

In the Supreme Court of the United States

CAROL HOWES, PETITIONER

v.

RANDALL FIELDS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED

Whether this Court's clearly established precedent under 28 U.S.C. § 2254 holds that a prisoner is always "in custody" for purposes of *Miranda* any time that prisoner is isolated from the general prison population and questioned about conduct occurring outside the prison, regardless of the surrounding circumstances.

PARTIES TO THE PROCEEDING

There are no parties to the proceeding other than those listed in the caption. The Petitioner is Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan. The Respondent is Randall Fields, a prisoner at the Lakeland Correctional Facility currently serving a sentence of imprisonment for 10-to-15 years as the result of his state convictions for third-degree criminal sexual conduct.

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OPINIONS BELOW

The opinion of the Sixth Circuit in *Fields* v. *Howes* is reported at 617 F.3d 813. Pet. App. 2a–30a. The opinion of the United States District Court granting federal habeas relief is an unpublished opinion filed February 9, 2009. Pet. App. 32a–51a.

The Michigan Supreme Court decision denying leave to appeal in *People* v. *Fields* is reported at 472 Mich. 938; 698 N.W.2d 394. Pet. App. 52a. The Michigan Court of Appeals' opinion affirming Fields' conviction of two counts of third-degree criminal sexual conduct is an unpublished decision filed May 6, 2004. Pet. App. 53a–62a.

JURISDICTION

The opinion of the Sixth Circuit affirming federal habeas relief was filed August 20, 2010. This Court has jurisdiction to review this petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment to the United States Constitution provides:

> No person shall be . . . compelled in any criminal case to be a witness against himself[.]

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, 104, 110 Stat. 1214, 1219, codified at 28 U.S.C. § 2254, provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

For nearly 50 years, this Court has eschewed any bright-line approach for determining whether a suspect is "in custody" for purposes of a *Miranda* warning, *Miranda* v. *Arizona*, 384 U.S. 436 (1966), instead applying a context-specific analysis. The question presented here is whether this Court in *Mathis* v. *United States*, 391 U.S. 1 (1968), impliedly jettisoned that context-specific test for incarcerated individuals, such that prison officials must always give *Miranda* warnings, regardless of the circumstances, before questioning prisoners about potentially incriminating conduct. It would be no small matter for this Court to change Fifth Amendment law to require a *per se* rule for *Miranda* warnings involving prisoners, and the State of Michigan respectfully submits that the *Mathis* opinion did no such thing.

In *Mathis*, neither the government nor the defendant challenged whether the defendant was "in custody" for purposes of *Miranda*. The issue was whether *Miranda* applied in the prison context at all. Thus, while this Court ultimately concluded that *Miranda* applied to prisoners, the *Mathis* opinion did not adopt a new, bright-line test that required a *Miranda* warning every time a prisoner is isolated from the rest of the prison population for questioning.

This Court revisited the relationship between custody and incarceration in *Maryland* v. *Shatzer*, 130 S. Ct. 1213 (2010), a case decided after the relevant state-court decisions here. As was the case in *Mathis*, "no one question[ed] that Shatzer was in custody for *Miranda* purposes," *Shatzer*, 130 S. Ct. at 1224, so there was no reason to address whether a prisoner's

isolation for questioning, without more, constituted a custodial interrogation. To the contrary, this Court in *Shatzer* affirmatively disclaimed the existence of any such rule: "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue." *Ibid.*

Due to the narrow holdings in *Mathis* and *Shatzer*, no federal circuit (aside from the Sixth) has ever concluded that this Court established a bright-line *Miranda* rule for prisoner interviews. And that fact is dispositive on the merits, because 28 U.S.C. § 2254(d) bars any habeas remedy unless Fields can show that his right to relief was "clearly established" by this Court's precedent at the time of his conviction. Having failed to make that threshold showing, it was error for the Sixth Circuit to grant Fields' habeas petition.

Wholly aside from the narrow standard of review applicable to a habeas challenge, there are sound reasons for declining to adopt the bright-line test that Fields propounds. Our law should encourage criminals to confess to the crimes they commit, provided that the circumstances surrounding the confession are not coercive. A bright-line *Miranda* rule ignores whether a prisoner's confession was actually voluntary, impedes prison interviews, and gives convicted criminals greater rights than those of ordinary citizens. Thus, this Court should continue to endorse *Miranda*'s context-specific test for prison interviews, and should reject the Sixth Circuit's new, bright-line approach.

Even if the Court were hearing this case on direct (rather than habeas) review, a context-specific inquiry would not require suppression of Fields' confession that

he sexually abused a 13-year boy. That is because the circumstances surrounding Fields' confession do not show police coercion. The state trial and appellate courts both reached that conclusion based on the totality of the evidence, with particular reliance on Fields' own testimony that he "could get up and leave [the interview] whenever [he] wanted to." Pet. App. 70a; accord Pet. App. 89a, 90a, 92a. Such freedom belies any sense of coercion, the risk that the courts fashioned *Miranda* to alleviate.

For all of the foregoing reasons, the State of Michigan respectfully requests that this Court defer to the state-court findings, reverse the court of appeals, and reinstate Fields' conviction for child sexual abuse.

STATEMENT OF THE CASE

1. Fields' sexual assault

Randall Fields is a health professional with an Associate's Degree in nursing, a Bachelor's Degree in Psychology, a Master's Degree in Counseling, and a conviction for pedophilia. Pet. App. 53a, 81a. He lived across the street from his victim who was 12-years old at that time. Pet. App. 53a. The two were introduced by Fields' nephew, who rode the victim's school bus. *Ibid.*

After the victim and Fields started "hanging out" at Fields' home, another adult, James Philo, moved in with Fields. Pet. App. 53a–54a. Fields described himself as a "fatherly figure" to the victim, Pet. App. 111a, and the two of them would sometimes watch pornographic films together with Philo, Pet. App. 54a.

One day, after consuming alcohol and smoking marijuana, Fields and Philo went into the bedroom where Fields performed oral sex on the victim. Pet. App. 54a. Philo also placed his mouth on the victim's penis. *Ibid.* At trial, the victim testified that Fields performed oral sex on him on two separate occasions. *Ibid.*

2. Fields' confession

On December 23, 2001, Fields was incarcerated in the Lenawee County Jail after pleading guilty to and being sentenced for disorderly conduct arising from a domestic-abuse charge. Pet. App. 54a, 67a, 84a. Sometime between 7:00 and 9:00 p.m., two jailers removed Fields from his cell, took him through the "J door" that connected the jail and the County Sheriff's Department, and walked him to a conference room. Pet. App. 54a, 68a–69a, 77a–78a, 87a–88a. Although Fields did not initially realize where he was going, he did not inquire, because he felt he was "in a safe environment." Pet. App. 87a–88a.

The conference room was a well-lit and sizable space with a desk, white board, and chairs. Pet. App. 88a. No one physically touched Fields or harmed him in any way. Pet. App. 88a. Fields "was not uncomfortable in this room," physically, Pet. App. 90a, nor was he shackled or handcuffed, Pet. App. 71a. After arriving at the conference room, a sheriff's deputy explained that Fields was being interviewed about whether he had any sexual involvement with the victim. Pet. App. 70a, 80a, 111a. As Fields himself admitted, after Fields arrived at the conference room, the sheriff's deputy told him that he "could get up and leave whenever [he] wanted to." Pet. App. 70a.

The first several hours of the interview involved a general discussion about Fields and the victim. Pet. App. 125a–126a. Approximately halfway through the interview, a deputy confronted Fields with the allegations. Pet. App. 80a. Fields denied the accusations and attempted to present a timeline of events to the deputy. Pet. App. 70a–71a, 106a.

According to Deputy David Batterson, Fields got out of his chair and began yelling. Batterson told Fields that he could return to his cell, because Batterson was not going to tolerate being talked to that way. Pet. App. 125a–126a. Accord Pet. App. 71a, 88a–93a (Fields claimed Batterson told him to "sit my f---ing ass down" and that "if I didn't want to cooperate, I could leave."). Fields did not ask to return to his cell, but instead sat back down and continued the interview. Pet. App. 125a–126a.

During Fields' interview, the officers offered him food or water, Pet. App. 124a, and provided Fields with water when he requested it, Pet. App. 97a, though Fields missed taking his medication because of the late hour, Pet. App. 79a. The officers did not threaten Fields, Pet. App. 98a; did not threaten to harm his family, *ibid*; and did not strike Fields or lay hands on him, *ibid*.

At his post-conviction evidentiary hearing, Fields said he was "intimidated" and "quite sure" that the officers present would not have allowed him to leave the conference room. Pet. App. 72a, 74a; accord Pet. App. 71a. But in response to questioning from his own attorney, Fields admitted that the deputy conducting the interview made clear that Fields "could get up and leave whenever [he] wanted to." Pet. App. 70a; accord

Pet. App. 75a. In fact, Fields reiterated several times his understanding that he was free to leave the interview whenever he wanted:

- "I was told, if I didn't want to cooperate, I could leave." Pet. App. 89a.
- "I was told I could get up and leave whenever I wanted." Pet. App. 90a.
- Q: "[Y]ou understood that, if you asked, one of them or a jailer would take you back to your cell?" A: "I assumed that." Pet. App. 92a.

Although Fields claimed that he told the officers "a couple of times" that he did not want to talk anymore, he admitted that he did not ask to go back to his cell "until the end" of the interview. Pet. App. 92a–93a.

Fields ultimately acknowledged that he had oral sex with and also masturbated the victim. Pet. App. 55a, 115a–116a. Fields also provided a statement specifying that Fields also engaged in oral sex with Philo and the victim in a motel, and that Fields masturbated the victim on two other occasions. Pet. App. 54a. The victim corroborated Fields' confession. Pet. App. 118a–119a.

During state-court proceedings, defense counsel moved to suppress Fields' confession, arguing that Fields was subjected to a custodial interrogation without being provided his *Miranda* warnings. Following an evidentiary hearing, the state trial court held the confession admissible after determining that given all the circumstances, there was no violation of *Miranda*: "In this particular case [Fields] was free to

leave, he was told that he was free to leave, and granted it might have taken a couple of minutes for that to be done. He knew that he could do this. . . . The motion [to suppress] is denied." Resp. App. 8a. A jury found Fields guilty of two counts of third-degree criminal sexual conduct for sexual abuse of a child. Mich. Comp. Laws § 750.520d.

3. State-court review of Fields' conviction

Fields appealed, arguing that his confession was inadmissible because he had not been given his *Miranda* warnings before questioning. The Michigan Court of Appeals rejected Fields' position because, under all the circumstances, *Miranda* warnings were not required:

> [D]efendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

Pet. App. 56a.

The Michigan Supreme Court denied Fields' application for leave to appeal. Pet. App. 52a.

4. Habeas review

Fields filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The district court granted habeas relief, concluding that the state courts had unreasonably applied this Court's holding in *Mathis*. Pet. App. 32a. The Sixth Circuit affirmed, interpreting *Mathis* as creating a bright-line test that requires prison officials to always give a *Miranda* warning, regardless of the circumstances, before asking any questions of an incarcerated individual who has been isolated from the general prison population:

> The central holding of *Mathis* is that a *Miranda* warning is required *whenever* an incarcerated individual is isolated from the general prison population and interrogated, i.e., questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison.
>
> * * *
>
> *This bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population.

Pet. App. 10a, 20a (emphasis added).

Writing separately, Judge McKeague disagreed with the majority, but noted that he was bound by the Sixth Circuit's decision one month earlier in *Simpson* v. *Jackson*, 615 F.3d 421 (6th Cir. 2010), where the Sixth Circuit applied the same bright-line test to an

Ohio inmate. Judge McKeague read *Mathis* as maintaining the context-specific inquiry that this Court has always applied when analyzing a custodial interrogation:

> *Mathis* holds that *Miranda* applies to a person interrogated while in prison on charges unrelated to the investigation for which he is interrogated, but it does not establish that such a person is automatically in custody or entitled to *Miranda* warnings anytime he is interrogated away from the general prison population. Instead, this determination depends on the context-specific analysis of whether the inmate is deemed to be "in custody"; *i.e.*, whether he was subject to the sort of isolation and coercive influence that trigger the need for *Miranda* warnings.

Pet. App. 23a (McKeague, J., concurring).

Judge McKeague did not see a bright-line rule in *Shatzer* either:

> [T]he fact that no one questioned whether Shatzer was in custody[] does not mean (or clearly establish) that anytime an inmate is removed from the general prison population and interrogated he is "in custody" for *Miranda* purposes. Instead, it only means that the parties, unlike the government in this case, did not make an issue of the "in custody" requirement in relation to those specific interrogations.

Pet. App. 24a (McKeague, J., concurring).

Applying the AEDPA standard, Judge McKeague would have denied habeas relief, because he could not "say that the Michigan Court of Appeals' decision applying the context-specific *Miranda* custody analysis is objectively unreasonable." Pet. App. 28a (McKeague, J., concurring). In this regard, Judge McKeague emphasized the critical fact that "Fields was told he could leave at any time." Pet. App. 30a. (McKeague, J. concurring).

The State of Michigan timely filed its petition for certiorari on November 18, 2010. The Court granted the petition on January 24, 2011.

SUMMARY OF ARGUMENT

The Sixth Circuit has created a bright-line rule that prisoners isolated from the general prison population must always receive a *Miranda* warning before interrogation commences when asked about conduct that occurred outside the facility. But such a rule is not rooted in this Court's caselaw. *Shatzer*, 130 S. Ct. at 1224 ("We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue."). To the contrary, the state courts' application of a context-specific analysis to determine whether Fields was entitled to a *Miranda* warning was consistent with this Court's precedent and a whole host of federal circuit decisions. Because a federal court may grant habeas relief to a state prisoner only if the earlier state court decision was contrary to or an unreasonable application of this Court's precedent, 28 U.S.C. § 2254(d)(1), the Sixth Circuit's grant of habeas relief should be reversed.

This Court should also repudiate the Sixth Circuit's bright-line rule for prison interviews. A context-specific approach appropriately considers all the facts and circumstances to determine whether a prisoner's confession was voluntary. In contrast, the Sixth Circuit's bright-line rule dispenses with any consideration of voluntariness, hampers prison administration, and provides prisoners with greater *Miranda* rights than those of other citizens. The Court should reject such a rule, which will serve no constitutional purpose and will deter prison confessions.

ARGUMENT

I. The decision of the state courts here was neither contrary to, nor an unreasonable application of, clearly established Supreme Court precedent.

A federal court may grant habeas relief to a state prisoner if the earlier state court decision was contrary to or an unreasonable application of clearly established federal law at the time of the decision. 28 U.S.C. § 2254(d)(1); *Harrington* v. *Richter*, 131 S. Ct. 770, 786 (2011); *Williams* v. *Taylor*, 529 U.S. 362, 403–04, 412 (2000). "[I]t is not an unreasonable application of clearly established federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court." *Harrington*, 131 S. Ct. at 786, quoting *Knowles* v. *Mirzayance*, 129 S. Ct. 1411, 1419 (2009). A rule that "breaks new ground" or "imposes a new obligation on the States or the Federal Government" is not a proper basis for federal habeas relief to a state prisoner. *Williams*, 529 U.S. at 381 (Stevens, J., concurring opinion).

Contrary to the rule established by the Sixth Circuit majority opinion here, this Court has never squarely held that "[a] *Miranda* warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Pet. App. 19a. Further, no other circuit has interpreted any case from this Court as establishing such a rule. The Sixth Circuit's approach arises directly from that court's erroneous interpretation of the *Mathis* and *Shatzer* opinions.

A. *Mathis* did not hold that *Miranda* warnings are automatically required whenever an incarcerated individual is questioned outside the general prison population.

The issue addressed in *Mathis* v. *United States* was whether *Miranda* applies at all to a suspect being held on an offense unrelated to the questioning. 391 U.S. 1 (1968). While incarcerated, the defendant in *Mathis* was interviewed by an I.R.S. agent regarding information reported in his tax returns. He was not advised that his answers could form the basis of a criminal prosecution, nor was he given the *Miranda* warnings. Based in part on his statements, the defendant was subsequently convicted of criminal tax violations. This Court held that the defendant was entitled to *Miranda* warnings.

Critically, however, whether the defendant was in custody during his I.R.S. interview was not disputed. The issue was whether *Miranda* should apply to a suspect already in custody on an unrelated matter because he is not being held for the purpose of questioning—the government had conceded the point that the defendant was in custody. After setting forth

the government's argument that Mathis was not being held for the purpose of questioning or questioned as part of a criminal investigation, the Court stated: "These differences are too minor and shadowy to justify a departure from the well-considered conclusion of *Miranda* with reference to warnings to be given to a person *held in custody*." *Mathis*, 391 U.S. at 4 (emphasis added). In other words, this Court did not adopt a bright-line rule that *Miranda* never applies to prison interrogations, in the context of a government concession as to custody.

But recognizing *Miranda*'s relevance to prison interrogations does not have the effect of creating clearly established precedent that *Miranda* warnings must always be given before conducting prison interrogations. This Court in *Mathis* was silent on the latter issue, and such silence is not precedential. See *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 272 (1970); *Hagans* v. *Lavine*, 415 U.S. 528, 533 n.5 (1974) ("when questions . . . have been passed on in prior decision sub silentio, this Court has never considered itself bound when a subsequent case finally brings the . . . issue before us); *Plaut* v. *Spendthrift Farm Inc.*, 514 U.S. 211, 232 n. 6 (1995) ("unexplained silence . . . lacks precedential weight"). Yet it is in this very silence upon which the Sixth Circuit discovers a 42-year-old bright-line rule for *Miranda* cases.

Nothing in *Mathis* suggests any greater protection to prisoners than other citizens, nor does *Mathis* set forth any bright line regarding custody inside a prison or police station. Nonetheless, the Sixth Circuit majority *interpreted Mathis* broadly as requiring a *Miranda* warning "whenever an incarcerated

individual is isolated from the general prison population and interrogated . . . about conduct occurring outside of the prison." Pet. App. 10a. In other words, the majority concluded that it was contrary to clearly established federal law for the state courts to even consider the circumstances surrounding Fields' interview. Pet. App. 10a–13a.

Mathis does not establish such a bright-line rule. To the contrary, as the concurring opinion correctly observed below, *Mathis*'s rejection of the idea that prisoners have no *Miranda* rights whatsoever hardly establishes a bright-line rule that prisoners are *always* entitled to *Miranda* warnings, regardless of the surrounding circumstances. Pet. App. 22a–23a. Such a ruling would be peculiar, affording prisoners greater protection under *Miranda* than the general public.[1]

Further, while the majority below found "the material facts in this case indistinguishable from *Mathis*," Pet. App. 11a, because custody was not at issue in *Mathis*, there was no need for a fact-specific analysis—and none was given. To read the government's concession of custody as the creation of a clear rule by this Court would be inappropriate in a direct review case, let alone one requiring the deferential treatment to be given the state courts on collateral habeas review.

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[1] Citizens are routinely questioned at police stations, rather than on the street or otherwise in the general population. Yet, there has never been a bright-line rule that such questioning always amounts to a custodial interrogation, without any consideration of the surrounding circumstances. Cf. *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977).

In any event, the facts in this case are quite distinct from *Mathis*. Randall Fields was not only highly-educated and familiar with the criminal justice system (unlike the defendant in *Mathis*), Fields was expressly informed that a criminal investigation was occurring and was repeatedly told that he could leave the interview at any time he wished. Pet. App. 70a, 89a, 90a, 92a. Further, unlike *Mathis*, Fields began yelling at the deputy during the interview and was warned that if he did not calm down he would be returned to his cell. Fields sat back down to continue the interview, and this was before his incriminating statements. Pet. App. 92a–93a. Had such favorable material facts existed in *Mathis*, it seems likely the government would not have conceded custody.

This is not a case in which the state courts ruled differently than this Court on a set of materially indistinguishable facts. Rather, it is a case in which the Sixth Circuit has improperly used habeas review as a vehicle for creating a new rule. The majority opinion inadvertently acknowledged that fact, setting forth prospective policy supporting the adoption of such a rule:

> This bright-line approach *will* obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation away from the general prison population. Furthermore, law-enforcement officials *will* have clearer guidance for when they must administer warnings prior to a prison interrogation.

Pet. App. 20a (emphasis added). *Mathis* was decided in 1968. If, as a grant of habeas relief to a state prisoner

requires, this bright-line approach had been clearly established federal law for the last 42 years, there would be no need to extol the benefits the approach "will" provide anew in the future.

B. *Shatzer* recognized the existence of an open question regarding *Miranda*'s application in the prison context.

In support of its broad interpretation of *Mathis*, the majority below relied on this Court's recent decision in *Maryland* v. *Shatzer*. However, as in *Mathis*, "no one question[ed] that Shatzer was in custody for *Miranda* purposes[.]" 130 S Ct. at 1224. Yet, ignoring this lack of dispute over custody, the Sixth Circuit majority opinion reasoned that the "unambiguous conclusion" in *Shatzer* is that a suspect is in custody for purposes of *Miranda* any time he is removed from his normal life in prison and taken to an isolated area or conference room. Pet. App. 16a.

As the concurring opinion below points out, just as in *Mathis*, the fact that custody was not at issue in *Shatzer* is hardly tantamount to clearly established precedent holding that *Miranda* warnings are required whenever a prisoner is questioned away from the general prison population.[2] Pet. App. 17a. Quite the opposite, *Shatzer* underscores the Sixth Circuit's error.

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[2] Even had *Shatzer* articulated a bright-line rule, habeas relief would be inappropriate because it was decided after the relevant decisions on the merits here and after this case became final; it cannot be retroactively applied. *Teague* v. *Lane*, 489 U.S. 288 (1988). *Mathis* was the existing precedent at the time of the decision, and no court had culled a bright-line rule from its holding.

First, this Court in *Shatzer* acknowledged that the test for analyzing Fifth-Amendment "custody" in prisons is an open question: "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue." 130 S. Ct. at 1224. Accord *Illinois* v. *Perkins*, 496 U.S. 292, 299 (1990) ("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here"). And that observation is dispositive here; an open question cannot be "clearly established" federal law for purposes of AEDPA. *Wright* v. *VanPatten*, 552 U.S. 120, 125 (2008); *Carey* v. *Musladin*, 549 U.S. 70, 76 (2006); *Lockhart* v. *Chandler*, 446 F.3d 721, 724 (7th Cir. 2006).

Second, *Shatzer* explains that whether incarceration amounts to custody for purposes of *Miranda* "depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against[.]" 130 S. Ct. at 1224. Far from recognizing a previously established bright-line rule, the Court reiterated that *Miranda* is driven by its purpose:

> We have declined to accord [the freedom-of-movement test] "talismanic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated."

Shatzer, 130 S. Ct. at 1224.

It would be odd indeed for this Court to have created a bright-line test, then fail to mention that test while repeatedly stressing *Miranda* is a fact-driven

analysis. In fact, shortly after *Shatzer* was decided, Justice Souter joined the First Circuit in denying a defendant's claim that incarceration automatically equals custody for *Miranda* purposes. Writing for the court in *United States* v. *Ellison*, 632 F.3d 727 (1st Cir. 2010), Justice Souter explained that the restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody." *Id.* at 729. Justice Souter's conclusion is the exact opposite of the bright-line test the Sixth Circuit considers "clearly established."

C. No other circuit has interpreted *Mathis* as establishing the bright-line rule the Sixth Circuit has now recognized.

Mathis was decided 42 years ago. Since then, no other circuit has interpreted its holding to create the bright-line rule now adopted by the Sixth Circuit. Rather, every other circuit to consider the issue has refused to recognize such a rule. *United States* v. *Ellison*, 632 F.3d 727, 730 (1st Cir. 2010); *United States* v. *Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988); *Alston* v. *Redman*, 34 F.3d 1237, 1245 (3d Cir. 1994); *United States* v. *Conley*, 779 F.2d 970, 972 (4th Cir. 1985); *United States* v. *Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999); *United States* v. *Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994); *Leviston* v. *Black*, 843 F.2d 302, 304 (8th Cir. 1988); *United States* v. *Turner*, 28 F.3d 981, 983 (9th Cir. 1994); *United States* v. *Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984); *Garcia* v. *Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994).

Mathis was first followed in *Cervantes* v. *Walker*, 589 F.2d 424, 427 (9th Cir. 1978). There, a sheriff's

deputy took a box of marijuana found during inspection to a prisoner sitting in the prison library and asked, "What's this?" to which the prisoner replied, "That's grass, man." *Id.* at 427. He was subsequently convicted of possessing marijuana. On habeas review, the Ninth Circuit first rejected the argument that *Mathis* creates a *per se* rule requiring *Miranda* warnings. Such an interpretation "would not only be inconsistent with *Miranda* but would torture it to the illogical position of providing greater protection to a prisoner than to his non-imprisoned counterpart." *Ibid.* The Ninth Circuit reasoned that a proper *Miranda* analysis examines the level of increased restrictions placed on a prisoner at the time of questioning:

> The concept of "restriction" is significant in the prison setting, for it implies the need for a showing that the officers have in some way acted upon the defendant so as to have "deprived (him) of his freedom of action in any significant way," . . . In the prison situation, this necessarily implies a change in the surroundings of the prisoner which results in an added imposition on his freedom of movement. Thus, restriction is a relative concept, one not determined exclusively by lack of freedom to leave. Rather, we look to some act which places further limitations on the prisoner. .

Id. at 428 (citation omitted). Thus, the Ninth Circuit reconciled *Miranda* and *Mathis* by considering the extent to which a reasonable prisoner would "believe his freedom of movement had been further diminished." *Cervantes*, 589 F.2d at 429. Accord *United States* v. *Turner*, 28 F.3d 981, 983 (9th Cir. 1994) ("to

determine whether *Miranda* warnings were necessary in a prison setting, 'we look to some act which places further limitations on the prisoner'"(citation omitted)).

Similarly, in *United States* v. *Conley*, 779 F.2d 970 (4th Cir. 1985), a direct-review case free from habeas-review deference, the Fourth Circuit also declined to read a bright-line rule into *Mathis*. Instead, the Fourth Circuit interpreted *Mathis* as applying the *Miranda* analysis to prisoners, rather than as creating any bright-line rule regarding custody:

> *Mathis* clearly holds that the fact that a defendant is imprisoned on an unrelated matter does not necessarily remove the necessity for *Miranda* warnings. Nothing in that opinion, however, suggests that an inmate is automatically "in custody" and therefore entitled to *Miranda* warnings, merely by virtue of his prisoner status.

Id. at 972. As in *Cervantes*, the court reasoned that the freedom-of-movement test does not serve the purposes of *Miranda* in the prison setting:

> A rational inmate will always accurately perceive that his ultimate freedom of movement is absolutely restrained and that he is never at liberty to leave an interview conducted by prison or other government officials. Evaluation of prisoner interrogations in traditional freedom-to-depart terms would be tantamount to a *per se* finding of "custody," a result we refuse to read into the *Mathis* decision.

Id. at 973 (emphasis from opinion).

Cervantes and *Conley* represent how Mathis has generally been understood for the last 42 years. E.g., *United States* v. *Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994) (analyzing prison interview under the totality of the circumstances); *United States* v. *Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984) (applying *Cervantes* test); *Garcia* v. *Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994) ("[a]fter reviewing the relevant law, we find the reasoning employed in *Cervantes* and *Conley* highly persuasive."). In a recent case materially indistinguishable from this one, the Second Circuit denied habeas relief because there was no clearly established Supreme Court precedent creating a *per se* rule. *Georgison* v. *Donelli*, 588 F.3d 145, 156 (2d Cir. 2009).

Until *Simpson* and this decision, even the Sixth Circuit acknowledged that "prisoners are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been 'a restriction of [the prisoner's] freedom over and above that of his normal prisoner setting.'" *United States* v. *Ozuna*, 170 F.3d 654, 658 n.3 (6th Cir. 1999) (citing *Cervantes*). In *Simpson* and this case, the panel majorities considered this universal set of precedents as factually distinguishable. Pet. App. 8a. But that misses the point: no other circuit has interpreted *Mathis* as establishing the bright-line rule the Sixth Circuit now recognizes in *any* set of facts.

Thus, the state courts here were not "objectively unreasonable" for failing to apply the bright-line rule. It is not unreasonable for state courts to apply the reasoning of myriad appellate precedents. Yet, the majority below simply declared the state-court

adjudication "contrary to" its own interpretation of *Mathis*. Pet. App. 7a. And that is exactly the sort of collateral review that 28 U.S.C. § 2254(d) forecloses.

II. This Court should reaffirm that the context-specific analysis for determining "custody" under *Miranda* applies to suspects who are incarcerated.

The proper standard for evaluating the question whether a suspect is "in custody" for the purposes of *Miranda* requires an examination of all the circumstances of the interrogation. *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995) (if "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave," the suspect is in custody and *Miranda* warnings must be issued before any interrogation). This standard applies to all suspects, including those who are incarcerated. Given the fact that this Court has recognized that lawful confinement by itself does not "create the coercive pressures identified in *Miranda*," *Shatzer*, 130 S. Ct. at 1224, the question is whether there are additional constraints imposed on an incarcerated suspect's liberty to determine if that person is "in custody."

Thus, where a suspect is interviewed in the prison but is free to leave the interview, there is no rationale for requiring *Miranda* warnings before the interview. An incarcerated suspect should be in no better or worse a position than an ordinary, non-incarcerated citizen.

The Sixth Circuit's bright-line rule is rooted in neither *Miranda* nor the Fifth Amendment. The location of the conduct at issue is irrelevant to the question whether the setting for interrogation creates

the coercive pressures that the *Miranda* warnings were intended to counteract. Rather, the focus of the inquiry should be on the circumstances of the interrogation.

Here, Fields was informed that he was free to leave his interview. He was not deprived of his liberty in any significant way as a consequence of this interview. He was therefore not "in custody" for purposes of *Miranda*, and the Michigan Court of Appeals rightly concluded that the police had no obligation to provide a *Miranda* warning.

A. Under the reasoning of *Miranda*, whether a prisoner is "in custody" depends on the additional limitations imposed on the accused during questioning.

The overarching justification for requiring *Miranda* warnings before police interrogation is that the "inherently compelling pressures" of this setting may "undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda*, 384 U.S. at 467. This conclusion is primarily predicated on a suspect's fear that the police will continue their interrogation "until a confession is obtained." *Minnesota* v. *Murphy*, 465 U.S. 420, 433 (1984).

"Custodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Thompson* v. *Keohane*, 516 U.S. 99, 107 (1995) (quoting *Miranda*, 384 U.S. at 444). Where the police pull a person from familiar surroundings, constrain that person's liberty through "'formal arrest or restraint on freedom of

movement' of the degree associated with a formal arrest," *New York* v. *Quarles*, 467 U.S. 649, 655 (1984)(citations omitted), and question the suspect to elicit incriminating responses, the general rule is that the police must initially inform the suspect of his rights. *Miranda*, 384 U.S. at 461 ("An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak.").

But a different calculus applies where the limitations on the suspect's freedom are unrelated to the questioning, as is the case with incarceration. In that circumstance, there is no necessary relationship between compulsion to respond and the limitations of freedom imposed on the suspect. *Shatzer*, 130 S. Ct. at 1224 (a suspect's continued incarceration is "relatively disconnected" from his invocation of his right to counsel). The "danger of coercion" is built on the "*interaction* of custody and official interrogation." *Illinois* v. *Perkins*, 496 U.S. 292, 297 (1990). A prisoner who is incarcerated already has significant limitations on his freedom, regardless of the nature of any official questioning that may occur. Thus, there is no "interaction" between the general "in custody" nature of the incarceration and the interrogation.

As this Court noted in *Shatzer*, the routine conditions of life for a prisoner do not create the "coercive pressures identified in *Miranda*." 130 S. Ct. at 1224 ("lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*."). This is because prison is the familiar setting for the prisoner:

> Interrogated suspects who have previously been convicted of crime live in prison. When they are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control they had over their lives prior to the interrogation. Sentenced prisoners, in contrast to the *Miranda* paradigm, are not isolated with their accusers. They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.

Id. at 1224–25. For a suspect who invokes his right to counsel, the return to the general population is "relatively disconnected" from the refusal to give a statement:

> Their detention, moreover, is relatively disconnected from their prior unwillingness to cooperate in an investigation. The former interrogator has no power to increase the duration of incarceration, which was determined at sentencing. And even where the possibility of parole exists, the former interrogator has no apparent power to decrease the time served.

Id. at 1224–25. (footnote omitted).

The key for determining the applicability of *Miranda*, then, is whether the police have imposed new or different conditions of confinement that might reasonably compel an incarcerated suspect to speak. E.g., *Cervantes*, 589 F.2d at 428 ("In the prison situation, ['restriction'] necessarily implies *a change in*

the surroundings of the prisoner which results in an added imposition on his freedom of movement.") (emphasis added); *Georgison*, 588 F.3d at 157 ("We conclude that *Miranda* warnings were not required in this case as 'there were no restrictions on [Georgison's] freedom over and above ordinary prison confinement[.]"). Because the ordinary conditions of prison confinement as noted in *Shatzer* are not inherently coercive in contrast to custodial interrogation under *Miranda*, only the additional limitations imposed on the suspect's liberty might compel the suspect to speak. And the fact that an incarcerated suspect is interviewed alone, away from other prisoners ("isolated"), would not by itself create a coercive setting requiring *Miranda* even where that suspect is not free to leave the prison. Cf. *Berkemer* v. *McCarty*, 468 U.S. 420, 440 (1984) (no requirement to provide *Miranda* rights to a detained motorist when questioned about possible criminal activity); *Shatzer*, 130 S. Ct. at 1224 (no requirement to provide *Miranda* rights at a *Terry* stop) (citing *Terry* v. *Ohio*, 392 U.S. 1 (1968)).

In this way, the general standards for evaluating *Miranda* custody questions apply equally to prisoners and other people; there is no need for a special bright-line rule to benefit incarcerated suspects. That is because custody requires an examination of "*all* of the circumstances surrounding the interrogation[.]" *Stansbury* v. *California*, 511 U.S. 318, 322 (1994). There are two distinct inquiries: (1) what were the circumstances surrounding the interrogation; and (2) whether a reasonable person would "have felt he or she was not at liberty to terminate the interrogation and leave." *Keohane*, 516 U.S. at 112 (1995). For a prisoner,

"leav[ing]" is merely returning to the general prison population and resuming the daily life of a prisoner.

Of course, a prisoner is not free to leave the prison, but the relevant question is whether the prisoner can leave the interrogation. There is a distinction between custody for the purposes of *Miranda* and incarceration or detention. This Court acknowledged the difference in *Berkemer*, 468 U.S. at 440, where it distinguished between the constraint on one's liberty that occurs for a motorist detained at a traffic stop and "custody" as a predicate to the requirements of *Miranda*. Noting the "noncoercive" nature of the detention of a traffic stop, the Court determined that *Miranda* must be strictly enforced "but only in those types of situations in which the concerns that powered the decision are implicated." *Berkemer*, 468 U.S. at 437 ("The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*.") *Id.* at 440. Likewise, where the constraint on liberty by itself—here, jail incarceration—does not implicate *Miranda*'s considerations, there is no requirement to provide *Miranda* warnings.

As a practical matter, when a prisoner is questioned, *Miranda* concerns will generally be satisfied if the police inform the prisoner that he may return to his prison setting at any time and end the interview. E.g., *United States* v. *Ellison*, 632 F.3d 727, 730 (1st Cir. 2010) ("Detective Flanagan told Ellison that he was not under arrest for the robberies and that he did not have to answer any questions. He was interviewed in the prison library (presumably one of its more comfortable areas), he was not restrained, and he

could go from the library at any time after pressing the button to summon the guards."). This is what happened here, by Fields' own admission.

B. The Court should reject a *Miranda* bright-line rule that would treat prisoners better than ordinary citizens.

For an ordinary citizen, mere isolation from one's normal, daily environment does not require *Miranda* protection; it is just one factor to be considered among many. All surrounding circumstances must be considered to determine whether a person is in custody and deserving of *Miranda* protection, *Keohane*, 516 U.S. at 112, particularly police advice that a suspect is free to terminate the interview. *United States* v. *Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006) (noting that when police give such advice, the circuit courts generally conclude that the defendant is not in custody).

If mere isolation is insufficient to invoke *Miranda* protection generally, it should not suffice for prisoners, either. As the Ninth Circuit aptly described it, making prison a safe harbor for prisoners "would not only be inconsistent with *Miranda* but would torture it to the illogical position of providing greater protection to a prisoner than to his nonimprisoned counterpart." *Cervantes*, 589 F.2d at 427. This Court should decline Fields' invitation to extend greater *Miranda* rights to prisoners than members of the general population.

C. The Court should also reject the Sixth Circuit's artificial distinction between conduct occurring within and outside a prison facility.

Whether a person is in custody for purposes for *Miranda* does not turn on the location of the conduct that is the subject of the questioning. Nonetheless, the Sixth Circuit further misinterpreted *Mathis* by concluding that its bright-line rule (itself a misreading of *Mathis*) is limited to "conduct occurring outside of the prison":

> The central holding of *Mathis* is that a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, *about conduct occurring outside of the prison*.

Pet. App. 10a (emphasis added).[3]

The Sixth Circuit's location distinction does not comport with *Miranda*. The dangers of coercion that gave rise to the *Miranda* rule arise out of "compelling pressures" of the interrogation process, *Miranda*, 384 U.S. at 467, without regard to the locus of the conduct about which questions are asked. A custodial setting is no more coercive if the suspect is questioned about

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[3] The Sixth Circuit tries to invoke *Miranda*'s "on-the-scene questioning" exception, but the Sixth Circuit's exception to its own bright-line rule is not limited to crimes that occurred in close time proximity to the interrogation.

conduct that occurred inside the prison as opposed to outside the prison.

Why then, would the Sixth Circuit create out of whole cloth a distinction regarding "on the scene" questioning? Pet. App. 12a. Because without that distinction, the Sixth Circuit's bright-line rule would require prison officials to give a *Miranda* warning before asking *any* question of an inmate, even something as innocuous as whether an inmate saw the fight that broke out in the prison yard, or simply "what happened?"

Apparently, even the Sixth Circuit recognizes that its bright-line rule should not apply to that extreme.[4] However, its attempt to limit the rule based on the place where questioned conduct occurred is unfounded. It speaks volumes about the constitutional validity of the bright-line rule that such machinations are required to make it appear reasonable and unduly restrictive on prison administration.

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[4] This Court has recognized the importance of voluntary confessions and the role they play in criminal prosecutions. "Admissions of guilt are more than merely 'desirable'; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Moran* v. *Burbine*, 475 U.S. 412, 426 (1986) (internal quotation marks and citation omitted). The loss of "highly probative evidence of a voluntary confession" is a "high cost to legitimate law enforcement activity[.]" *Oregon* v. *Elstad*, 470 U.S. 298, 312 (1985). See also *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 225 (1973).

D. The circumstances of Fields' interview demonstrate that he was not "in custody" under *Miranda*.

When Deputy Batterson interviewed Fields about his molestation of the victim, the interview occurred in a conference room adjacent to the jail. Pet. App. 110a. The conference room was well lit, included a desk, a whiteboard, and some chairs, and was not a small room. Pet. App. 88a. While being taken to the conference room, Fields conceded that "I felt like I was in a safe environment." Pet. App. 88a. The door to the conference room was open some of the time and closed some of the time. Pet. App. 70a.[5] He was not handcuffed or otherwise constrained in any way.

Most important, the record is unambiguous that Fields was informed at the beginning of (and during) the interview that he was free to leave and could end the interview at any time. The testimony came from Fields himself:

> Q: And when you got to the room, was anything said to you?

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[5] The Sixth Circuit misinterpreted this part of the record, determining that the door to the conference room was "locked." Pet. App. 13a ("[t]he conference room was locked"). See also Pet. App. 3a, 4a. The testimony of Fields was that the "J Door" was locked. Pet. App 71a, 72a. The J door separated the jail from the location of the conference room. Pet. App. 72a. Fields testified that the door to the conference room, which is a different door, was open part of the time and closed part of the time. Pet. App. 72a ("[p]art of the time it was open; part of the time was shut.") Pet. App. 70a. Later Fields stated that this door was locked, but apparently corrected himself to say "shut": "The door was locked—or shut, then it was open." Pet. App. 74a.

> A: That Mr. Batterson did say that *I could get up and leave whenever I wanted to.* However, when we got into a more-involved discussion, I tried to draw a time line on the blackboard for him, showing him the events that occurred, and I was told to—that that was not f------ important, and I needed to take a seat, and *if I did not want to cooperate, I needed to go back to my cell.*

Pet. App. 70a–71a (emphasis added).

While Fields also contended that he in fact would not have been allowed to leave if he requested to do so, Pet. App. 72a, he further explained that he understood that he would have been escorted back to his cell by either the interviewing officers or one of the jail guards if he had asked to leave:

> Q: So when they said that you were free to leave and you get up—could get up and go and all you had to do was tell them you wanted to go, in you mind, did you understand that to mean that somebody would come get you and take you back to your cell?
>
> A: But that doesn't give me freedom to just get up and walk away.
>
> * * *
>
> Q: That's how you got there.
>
> A: Because I did not know if a jailer [i.e., guard] would take me back or if one of

those gentlemen [i.e., interviewing deputy sheriffs] would take me back.

Q: *But you understood that, if you asked, one of them or a jailer would take you back to your cell?*

A: *I assumed that.*

Q: *And you believed that to be true?*

A: *I assumed that.*

Pet. App. 91a–92a (emphasis added).

Fields admitted that he did not ask to go back to his cell "until the end" of the interview. Pet. App. 92a–93a. He also admitted that he was not physically "uncomfortable" in the conference room; his only discomfort arose from "the things that they were saying to me"—Deputy Batterson accused him of molestation. Pet. App. 90a.

On direct review, in similar cases, the lower federal courts have reached the same conclusion the state courts did here—that *Miranda* does not apply. E.g., *Ellison*, 632 F.3d at 730 (Souter, J., writing for the panel) ("He was interviewed in the prison library (presumably one of its more comfortable areas), he was not restrained, and he could go from the library at any time after pressing the button to summon the guards."); *Georgison*, 588 F.3d at 156–157; and *Menzer*, 29 F.3d at 1232.[6] Accord *Oregon* v. *Mathiason*, 429 U.S.

[6] See also *Garcia* v. *Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994); *United States* v. *Conley*, 779 F.2d 970, 973 (4th Cir. 1985); *Cervantes* v. *Walker*, 589 F.2d 424, 429 (9th Cir. 1978).

492, 495 (1977) (interview at a police station, a "coercive environment," was not dispositive for purposes of a *Miranda* analysis; rather, the analysis must focus on the suspect's freedom—"there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way.").

In this way, the state courts were correct in concluding that Fields was not in custody for purposes of *Miranda* during his interview.[7] Fields was free to leave the conference room, return to his cell, and end the interview at any time. See *Keohane*, 516 U.S. at 112 (identifying the standard that "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave"). He was repeatedly told this. Pet. App. 70a, 89a, 90a, 92a.

Thus, even if this were a case of direct appellate review, the state court decisions would stand. Examined under the principles of habeas deference, this determination is even clearer. As noted already, whether *Miranda* rights must always be afforded to prisoners under questioning has been expressly reserved by this Court. *Perkins*, 496 U.S. at 292 ("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is

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[7] The Michigan Court of Appeals noted that while Fields was "unquestionably in custody" on an unrelated matter, that the *Miranda* warnings were not required. Pet. App. 56a. The use of "custody" by the state court was not for the purposes of *Miranda*, but rather to indicate incarceration, similar to this Court's recognition that the suspect in *Berkemer* was "temporarily detained" and not free to leave, but was not "in custody" under *Miranda*. *Berkemer*, 468 U.S. at 440.

speaking to an official, but we do not have occasion to explore that issue here."). This point was reiterated in *Shatzer*. 130 S. Ct. at 1224 ("We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue."). An open question, reserved by this Court, cannot form the basis of clearly established Supreme Court law for purposes of habeas review. *Carey* v. *Musladin*, 549 U.S. 70, 77 (2006)("Given the lack of holdings from this Court regarding the potentially prejudicial effect of spectators' courtroom conduct of the kind involved here, it cannot be said that the state court 'unreasonabl[y] appli[ed] clearly established Federal law.'")(citation omitted). The Michigan Court of Appeals' decision that Fields was not entitled to *Miranda* warnings was not an unreasonable application of clearly established Supreme Court precedent.[8] This Court should reverse.

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[8] The Court of Appeals' conclusion—that Fields was told "that he was free to leave the conference room and return to his cell"—was amply supported by the record. The decision that this was a circumstance in which *Miranda* was not required was not contrary to, nor an unreasonable application of, clearly established Supreme Court precedent under 28 U.S.C. § 2254(d). There was no "extreme malfunction" by the Michigan Court of Appeals in refusing to grant relief here. *Richter*, 131 S. Ct. at 786 ("Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions' . . ., not a substitute for ordinary error correction through appeal.") (citation omitted).

CONCLUSION

The judgment of the court of appeals should be reversed.

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RESPONDENT'S BRIEF

RECORD
AND
BRIEFS

No. 10-680

7

In The

Supreme Court of the United States

CAROL HOWES,

Petitioner,

vs.

RANDALL FIELDS,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether this Court's clearly established precedent holds that a prisoner is "in custody" for purposes of *Miranda* when he is removed from the general prison population, subjected to further restrictions on his freedom of movement and interrogated about conduct occurring outside the prison and unrelated to the reason for his incarceration.

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COUNTER STATEMENT OF THE CASE

In December of 2001, Randall Fields was serving a 45-day sentence on a disorderly conduct conviction. On December 23, 2001, two sheriff's deputies investigating a sexual assault complaint came to the jail and had Mr. Fields removed from his cell. They had him taken under guard through a locked door into the administrative section of the jail, and there, without being advised of his Miranda rights, the deputies extracted an inculpatory statement from him regarding conduct occurring outside the prison. This interrogation occurred after hours and lasted hours.

A. Pre-trial and Trial Proceedings

Before trial, Respondent moved to exclude the statement from evidence because it was taken in violation of his Fifth Amendment rights. In deciding the issue, the trial court reviewed Respondent's testimony taken at an evidentiary hearing and also the testimony of Deputy Batterson offered at the preliminary examination.

Respondent testified that a jail guard and Deputies Batterson and Sharp took him out of his cell and walked him from his cell on the third floor to the second floor and through J door, a locked door which separated the jail from the Sheriff's Department. The guard left him at the door. He was inside a conference room with the two deputies. Pet. App. 68a-69a, 72a.

He was not advised that he was a suspect in a criminal investigation nor was he advised of his Miranda rights. Pet. App. 70a-71a. Deputy Batterson told him he could get up and leave anytime he wanted to, but he knew he "could not freely leave. I was well aware of that." Pet. App. 71a.

He was wearing an orange jumpsuit, but was unsure if he had handcuffs and ankle cuffs on. He felt:

> There was no freedom to leave. I mean, I was trapped. I couldn't – even if I would have gotten up and left, I wouldn't have known how to get back to the jail. The door was locked so there was no place for me to go.

Pet. App. 71a. Respondent was quite sure that the deputies would not have allowed him to leave. Pet. App. 72a.

He felt intimidated by the situation because both deputies had guns and because the door was locked. He admitted to being fearful and so scared that he got cotton mouth. He had never been in that area of the building before and had no idea how to get back to his cell. Pet. App. 74a-75a. In fact when walking back to his cell at 1:30 a.m., he started down the wrong hall. Pet. App. 76a, 77a.

He was frightened of Deputy Batterson who spoke harshly to him, swore at him, and commanded him to remain seated. Pet. App. 76a-77a. Respondent felt that he did not have an option on whether to speak to Batterson. He had to speak to him because

he was isolated and had no idea how to get back. Pet. App. 77a.

Respondent estimated that the deputies came to get him about 8:00 p.m. and he got back to his cell at 2:00 a.m. Pet. App. 77a. It was December 23 and he was conscious of the fact that the jail was short staffed and his guards mentioned that they did not understand why the interrogation was taking place at such an unusual time. Pet. App. 78a.

The interrogation ended three hours after he would normally be asleep. This also meant that he missed taking his medication at 10:00 p.m. The petitioner had a transplanted kidney and needed to take Prograf (sp) and Cellcept, anti-rejection drugs, and also Paxil, a medication for depression.[1] Pet. App. 78a-80a.

It took 20 minutes for a jailor to arrive to return him to his cell and during that time he was still being questioned. Pet. App. 89a, 92a-93a.

Batterson testified that he had Defendant's jailors take him out of his cell and bring him to a conference room on a different floor in the main part of the Sheriff's Department, away from the jail. Fields was dressed in jail oranges. The detective

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[1] Upon returning to his cell, Respondent was told that he could not be given these medications because it was too close in time to his 5:00 a.m. meds. Pet. App. Transcript of Hearing 78a-80a.

admitted that the Defendant could not have just gotten up and walked out of the room. He would have had to wait until a corrections officer came to escort him back to the cell. Res. App. 16a-17a.

The trial court denied the motion to exclude the statement finding that the defendant knew he was free to leave. Res. App. 8a.

At trial, Deputy Batterson on cross examination admitted that the interrogation started at either 7:00 p.m. or 9:00 p.m. and lasted until 1:00 a.m. or 2:00 a.m. The admissions occurred near the end of that time period. Pet. App. 123a-124a. Earlier in the interrogation, the defendant became upset. The Deputy told him he could leave but never got someone to take him back to his cell. Pet. App. 125a-126a.

Deputy Dale Sharp testified that he was a field training officer and his job was to observe Deputy Batterson's behavior and make sure it was appropriate. Pet. App. 128a. The interrogation started probably at 6:00 p.m. in the evening and lasted about 7 hours. Pet. App. 129a, 132a-134a. The officer testified that a seven-hour interrogation was not unusual although he admitted that this was the only interrogation of that length that he had either observed or in which he had taken part. Pet. App. 132a. Mr. Fields was never told that he did not have to talk to the deputies. Pet. App. 134a-135a. Mr. Fields never asked to leave. Pet. App. 130a.

After a jury trial, Randall Fields was convicted of two counts of criminal sexual conduct in the third degree. He was sentenced to 10-15 years in prison.

B. State Appellate Proceedings

On May 6, 2004, the Michigan Court of Appeals in a per curiam opinion affirmed Respondent's convictions. Pet. App. 53a-62a. The Court stated:

> Here defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although, defendant was not read his Miranda rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because Miranda warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

Pet. App. 56a.

On December 9, 2004, the Michigan Supreme Court, in *People v. Fields*, 472 Mich. 938; 698 N.W.2d 394, denied leave to appeal stating that it was not persuaded that the questions presented should be reviewed by the Court. One justice would have granted leave to appeal. Pet. App. 52a.

C. Federal Habeas Review

Randall Fields filed a petition for a writ of habeas corpus in the United States District Court for Eastern District of Michigan. On February 9, 2009,

the district court judge issued a conditional writ of habeas corpus. Pet. App. 32a-51a. The Court found:

> *Mathis* clearly states that Miranda warnings are required when a suspect is in custody regardless of the reason why the suspect is in custody. The Michigan Court of Appeals' conclusion that investigators were not required to advise Petitioner of his Miranda rights because his custody was unrelated to the crime under investigation is an unreasonable application of *Mathis*.

Pet. App. 45a.

On August 20, 2010, the United States Court of Appeals for the Sixth Circuit affirmed the decision of the district court in *Fields v. Howes*, 617 F.3d 813. Pet. App. 2a-30a. In reference to *Mathis*, the Court stated:

> The central holding in *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison.

Pet. App. 10a. It further found that the state court's decision was contrary to clearly established Supreme Court law. Pet. App. 10a.

> The Michigan Court of Appeals did not cite *Mathis* nor any case relying upon *Mathis* in its decision. However, the material facts in

> this case are indistinguishable from *Mathis*. In both cases, the imprisoned suspect was interrogated about a matter unrelated to his offense of incarceration. Yet, while the Supreme Court in *Mathis* held that the suspect was entitled to a Miranda warning prior to interrogation, the Michigan Court of Appeals ruled that a Miranda warning was not required. The Michigan Court of Appeals therefore arrived at a conclusion contrary to clearly established federal law.

Pet. App. 11a.

On November 18, 2010, the State of Michigan filed its petition for certiorari. On January 24, 2011, this Court granted the petition.

SUMMARY OF ARGUMENT

The Petitioner contends that by using the phrase "bright-line approach" the Sixth Circuit has made new law on habeas review contrary to the commands of the Anti-Terrorism and Effective Death Penalty Act (AEDPA). 28 U.S.C. 2254(d). However, not every bright-line approach necessarily overrules precedent, breaks new ground, or imposes new obligations on the government. This certainly has not happened here where the dictates of *Miranda*, *Mathis*, *Mathiason*, and *Perkins* controlled the interrogation of this in-custody suspect who was isolated from the general prison population while being questioned by officers unaffiliated with the prison about events occurring

outside of the prison. This bright-line approach merely distilled clearly established Supreme Court law. Those four cases mandated that Respondent be advised of his rights before he was interrogated.

But even if this Court should find that this particular bright-line approach is neither clearly established Supreme Court law nor reflective of it, the writ should still issue. The Michigan Court of Appeals opinion was obviously contrary to clearly established Supreme Court law because it relied on a test rejected by the *Mathis* Court. The decision was also based on an unreasonable application of the principles espoused by the above four cases to the facts of this case. 28 U.S.C. 2254(d)(1).

ARGUMENT

I. Where clearly established Supreme Court law consists of a principle that owes its origin to more than one case, it does not necessarily break new legal ground or impose new obligations on the States and the Federal government.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) amended the habeas statute found at 28 U.S.C. 2254. Subsection (d) of the statute states, in pertinent part, that an application for a writ of habeas corpus challenging a state court conviction may only be granted if the petitioner shows that the proceeding

> 1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;

Under this statute, this Court must determine whether a particular decision of a lower court announced a new rule or whether it simply applied "a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered in the prior case law." *Williams v. Taylor*, 529 U.S. 362, 381 (2000). Rules which break new ground or impose new obligations on the States or the Federal government fall outside the rubric of "clearly established Federal law." If the Supreme Court "has not broken sufficient legal ground to establish an asked-for constitutional principle, the lower federal courts cannot themselves establish such a principle. . . ." *Id.*

Clearly established Supreme Court law excludes *dicta*. It is "the governing legal principle or principles set forth by the Supreme Court at the time the State court renders its decision." *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). It refers to more than just the cases in which there was a controlling decision as opposed to those where no such decision is made. The former category would include very few cases since a rule is controlling only if it matches the case before the court both as to law and facts. Most cases are factually distinguishable in some respect.

Certain principles are so fundamental that when new factual permutations arise, the necessity of applying the earlier rule will be beyond doubt. While the difference between applying a rule and extending a rationale is not always clear, even extending a rationale does not always mean making new law. *Yarborough v. Alvardo*, 541 U.S. 652, 666 (2004). *Miranda* itself felt that it was not making new law. It stated that its "holding was not an innovation in our jurisprudence, but an application of principles long recognized and applied in other settings." *Miranda*, 384 U.S. at 442.

As this Court has noted, a rule of law may be sufficiently clear for habeas purposes even when it is expressed in terms of a generalized standard rather than as a bright-line rule.

> If the rule in question is one which of necessity requires a case-by-case examination of the evidence, then we can tolerate a number of specific applications without saying that those applications themselves create a new rule . . . . Where the beginning point is a rule of this general application, a rule designed for the specific purpose of evaluating a myriad of factual contexts it will be the **infrequent case** that yields a result so novel that it forges a new rule, one not dictated by precedent. (emphasis added).

Williams, *supra* at 382 quoting from *Wright v. West*, 505 U.S. 277, 308-309 (1992) (Kennedy J., concurring

in an opinion applying *Teague v. Lane*, 489 U.S. 288 (1989)).

The lack of an explicit statement from one case only is not determinative of whether clearly established law exists because relevant precedent includes bright-line rules, legal principles, and standards flowing from precedents. The fact that a principle is based on more than one case does not conflict with subsection (d)(1). Congress used the phrase "clearly established Supreme Court **law**", not clearly established Supreme Court **precedent**. A habeas court is not limited to one Supreme Court case in making its decision. It may rely on a matrix of cases from the Supreme Court to identify the controlling principle in the case before it.

A. Clearly established Supreme Court law requires that Miranda rights be given to an inmate who has been removed from the general prison population and is being questioned about events that occurred outside the prison by officers unaffiliated with the prison.

Under subsection (d)(1), a state court decision is an unreasonable application of clearly established law if the state court identified the correct governing principle from "this Court's decisions" but unreasonably applied that principle to the facts of the inmate's case. A state court decision is contrary to clearly established Supreme Court precedent if the state court arrived at a conclusion opposite to that reached

by the Court on a question of law or if the state court decided a case differently than the Court has on a set of materially indistinguishable facts. *Williams*, *supra* at 412-413. The *Williams* Court speculated that there would be a variety of cases in which both phrases would be implicated. *Id.* at 385-386.

Starting with *Miranda v. Arizona*, 384 U.S. 436 (1966), clearly established law of this Court holds that a suspect who has been taken into custody, or otherwise deprived of his freedom of movement in any significant way, must be advised of four rights. Custody for Miranda purposes is distinguished by the fact that the suspect is held incommunicado in an unfamiliar police-dominated atmosphere. *Id.* at 457. Incommunicado interrogation is the principal psychological factor contributing to a successful interrogation. *Id.* at 445. It involves psychological pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. *Id.* at 467.

In determining if a suspect is in custody, a court examines two factors. First, what were the circumstances surrounding the interrogation, and second, given those circumstances, would a reasonable person have felt at liberty to terminate the interrogation and leave. This an objective test. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). If custody is present, the duty to advise the suspect of his rights is triggered. But the *Miranda* Court also identified two exceptions to this rule. These were for circumstances where the statement is voluntary and where the statement is

taken at the scene of the crime. *Miranda, supra* at 477-478. *Miranda* did not recognize a prison-setting exception to statements taken from an inmate.

If there was any uncertainty that *Miranda* was applicable behind prison walls, it was resolved in *Mathis v. United States*, 391 U.S. 1 (1968). The Supreme Court held that when officers unaffiliated with a prison seek to question an inmate about conduct occurring outside the prison, the inmate must be advised of his Miranda rights. In arriving at its decision, the *Mathis* Court rejected the Government's attempt to narrow the scope of *Miranda*.

> The Government also seeks to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is in 'custody' in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights.

Id. at 4. The Court called making a distinction based on why the suspect was incarcerated or who incarcerated him "too minor and shadowy to justify a departure from the well considered conclusions of *Miranda* with reference to warnings to be given to a person held in custody." *Id.* Instead the *Mathis* Court reaffirmed the definition of custody found in *Miranda*.

> . . . we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant

> way and is subjected to questioning, the privilege against self-incrimination is jeopardized.

Mathis, 391 U.S. at 5 quoting from *Miranda*, *supra* at 478. It recognized that nothing in *Miranda*, called for curtailment of the warnings solely because one was already in custody. *Mathis*, *supra* at 4-5. *Mathis* made no change to the existing law excluding volunteered statements and statements taken at the scene of a crime from the Miranda requirement.

In *Oregon v. Mathiason*, 429 U.S. 492, 494 (1977), the Court, looking to *Mathis*, stated that " . . . the Miranda principle [is] applicable to questioning which takes place in a prison setting during a suspect's term of imprisonment on a separate offense." The Court rejected the argument that *Miranda* applies to a suspect who voluntarily entered a state police office and was also told that he was not under arrest. It stated:

> Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited.

Id. at 495. The Court also refused to find the environment coercive where the parolee, by phone, agreed to meet with the officer. He was given the opportunity to select a location for the meeting but declined to do so. The officer then suggested the parole office to which the parolee consented. The interview lasted 30

minutes and the suspect departed on his own. The Court noted that the question of whether the environment was coercive is a separate question from that of custody. *Id.* at 495-496. This is a subjective test. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).

Besides *Miranda*, *Mathis*, and *Mathiason* a fourth case forms part of the matrix of clearly established law on the issue of prison interrogations. That case is *Illinois v. Perkins*, 496 U.S. 292, 297 (1990). In *Perkins*, an undercover agent posing as an inmate shared a cell with the defendant. The Court found that Miranda warnings were not required because the imprisoned Mr. Perkins was not aware that his interrogator was an officer and he was not isolated from the general prison population. The "danger of coercion [that] results from the interaction of custody and official interrogation" was lacking. *Id.* This statement fell into one of the two exceptions to the Miranda rule, voluntariness, and it also lacked a condition precedent, custody.

From these four cases, the following principles flow: (1) custodial interrogation requires the advice of rights; (2) *Miranda* travels over prison walls; (3) not every official interrogation in a potentially coercive environment is in-custody questioning; (4) Miranda custody is more than ordinary prison custody; and (5) Miranda custody in prison is marked by isolation from the general prison population and questioning by officers unaffiliated with the facility.

So neither *Mathis*, which noted several salient facts in arriving at its decision, nor the Sixth Circuit based their decision solely on the assumption that just because one is incarcerated, the custody requirement of *Miranda* is automatically met. In particular, the circuit court did not merely find that Fields was in a state prison and cease further analysis. Instead it too looked to the circumstances of the interrogation in order to see if the element of coercive custody was present. It found it to be present where the interrogation, that is – questioning in a manner likely to lead to self-incrimination – occurred while the inmate was isolated from the general prison population. This, then, is the key to applying *Mathis*, Pet. App. 10a.

> The critical issue in this inquiry becomes whether the prisoner is isolated from the general prison population for questioning. "*Miranda* . . . was designed to guard against . . . the 'danger of coercion [that] results from the interaction of custody and official interrogation." *Id.* at 1224 (citing *Illinois v. Perkins*, 496 U.S. 292, 297 (1990)).

Pet. App. Opinion 19a.

Petitioner contends that *Illinois v. Perkins* did not decide whether the condition of being a prisoner meets the definition of custody for Miranda purposes and thus there was no clearly established law on this issue. But a principle flowing from *Perkins* is part of the matrix of holdings on the subject of Miranda rights behind bars.

Petitioner further argues that the issue before this Court was not decided until last year in *Maryland v. Shatzer*, 130 S. Ct. 1213, 1224 (2010), and thus it was not clearly established law at the time of the state court's decision. Respondent concedes that the *Shatzer* Court stated that the question of whether prison custody is the equivalent of Miranda custody had never been decided. However, sufficient legal ground had already been broken so that at the time of the state court's decision in this case, clearly established Supreme Court law had already answered the question. The *Shatzer* holding that "lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*" is anti-climatic. The only new rule promulgated in *Shatzer* is the 14-day rule.

Here, neither the district court's opinion nor the circuit court's opinion broke new ground. Neither court relied on ordinary prison custody alone for its conclusion. They relied on the circumstances of that custody at the time the statement was taken. These circumstances were that the defendant was serving time on a matter unrelated to the subject of the questioning; he was removed from his cell and taken to another location away from the prison proper; he was questioned by officers unaffiliated with the jail; he was dependent on them for movement; the questioning concerned conduct occurring outside of the prison; and he was isolated from an environment with which he was familiar.

Petitioner reads the decision of the Sixth Circuit in this case too broadly. The court did not hold that every time a prisoner is removed from his normal life in prison and taken to an isolated area he is in Miranda custody. Pet. Brief 18. The Sixth Circuit instead read *Mathis* as follows:

> The central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination about conduct occurring outside of the prison.

Pet. App. 1a. Petitioner ignores that last prepositional phrase "about conduct occurring outside of the prison." That qualifier makes all the difference. The Sixth Circuit again referred to *Mathis*' "essential holding" as follows:

> Miranda warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison.

Pet. App. 13a. As will be discussed below, without this qualifier, the prison administration might feel handcuffed in applying its own rules of security.

Isolation is the key to Miranda custody because when coupled with official questioning it has a coercive effect on the individual. Here Miranda custody was present because the interrogation occurred

outside the jail proper, by officers not affiliated with it, in a place where the Respondent had never been, behind a locked door (the J door) in a police-dominated atmosphere. It occurred after hours where the Respondent was not just isolated from his fellow prisoners and his familiar surroundings but also from his jailers. The questioning concerned conduct occurring beyond the prison walls. The fact that the interrogation is conducted by officials from outside the prison adds to the coercive nature of the interrogative environment. *Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978).

The Sixth Circuit Court of Appeals relied on the contrary clause of 28 U.S.C. 2254(d)(1) in affirming the issuance of the writ. A state court decision is contrary to clearly established Supreme Court precedent if the state court applies a rule that contradicts the governing law set forth in Supreme Court cases. *Williams*, *supra*, at 405. "Contrary to" means diametrically different, opposite in character or nature, or mutually opposed. In *Mathis*, the Court had decisively rejected the argument that *Miranda* did not apply where the inmate was in custody on a completely different offense from the one on which he was being questioned and where the interrogating officers were not the ones holding him in custody. *Mathis*, 391 U.S. at 4-5. But the Michigan Court of Appeals held just that. *Miranda* was not applicable because the interrogation was unrelated to the reasons why the inmate was in custody. Pet. App. 56a. This holding was diametrically opposed to the *Mathis* holding. Pet.

App. 10a-11a. The district court found that both clauses of subsection (d)(1) had been violated by the state court. Pet. App. 43a. As the *Williams* Court observed, both phrases may be implicated in one case.

Fidelity to *Miranda* requires "that it be enforced strictly, in those situations in which the concerns that powered the decision are implicated." *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). The matrix of cases discussed above compel the result reached by the Sixth Circuit regardless of whether there was a bright-line rule. The state court decision was contrary to and an unreasonable application of this clearly established Supreme Court law. Especially when the contrary clause of subsection (d)(1) is invoked, the extreme malfunction requirement of *Harrington v. Richter*, 131 S. Ct. 770, 786 (2011) is easily met.

B. The Sixth Circuit's bright-line approach rests on well established constitutional principles already identified by this Court.

Petitioner argues that the Sixth Circuit in announcing its bright-line approach was making new law and thus not remaining within the restriction imposed by 28 U.S.C. 2254(d)(1). It contends that the court of appeals resorted to this because of this Court's silence on the issue. To illustrate its argument, Petitioner cites to *Carey v. Musladin*[2] and *Wright v.*

[2] 549 U.S. 70 (2006).

Van Patten,[3] but these two cases offer little support to Petitioner.

In *Musladin*, the Ninth Circuit relying on *Estelle v. Williams*, 425 U.S. 501 (1976) (defendant, forced to wear prison garb by the State, was denied a fair trial), held that the defendant was denied due process where family members wore buttons displaying a photo of the deceased during the murder trial. In reversing this decision, the Supreme Court noted that the *Estelle* case applied only to government-sponsored conduct, not to private conduct. Notably, the Court did not base its decision on a lack of factual similarity. Instead, it found that there was a lack of holdings from the Supreme Court on spectator conduct in court rooms.

As for *Wright v. Van Patten*, the Seventh Circuit had extended the holding in *United States v. Cronic*, 466 U.S. 648 (1984), in which the prejudice prong of *Strickland* was presumed where counsel was completely absent, to an instance where counsel was physically absent but participated via speakerphone. In reversing, this Court noted that its precedents do not address whether participation by speaker phone constitutes the complete absence of counsel. *Cronic* of course announced a narrow rule to be applied in rare circumstances. One would not expect its extension to other fact situations.

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[3] 552 U.S. 120 (2008).

Here, the Sixth Circuit found that there was no lack of Supreme Court opinions on Miranda custody and *Miranda* behind bars to guide it. It did not take a narrow principle and enlarge it to reach a novel situation, nor did it extend established principles to a new situation. But in *Musladin* and *Wright*, the circuit courts did just that, extending Supreme Court principles to new situations which could not possibly have been contemplated by this Court.

Petitioner also anchors its argument on the use of the phrase "bright-line." But not every bright-line rule is a new law. *Solem v. Stumes*, 465 U.S. 638, 646 (1984) (*Edwards* established a bright-line rule to safeguard pre-existing rights, not a new substantive requirement). The rule of which Petitioner complains is formulated as follows:

> A Miranda warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside the prison.

Pet. App. 19a. The Sixth Circuit described its approach thus,

> This bright-line approach will obviate the fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation away from the general prison population.

Pet. App. Opinion 20a.

In arriving at this approach, the Circuit Court looked to such factors as whether the inmate was placed in a room apart from other prisoners, whether he was taken to a separate location, and whether the duration of the interrogation was dependent on his interrogators. Pet. App. 19a. These factors, although gleaned from *Shatzer, supra* at 1224-1225, are found in *Mathis* and *Perkins*.[4] The *Shatzer* Court itself found interrogative custody to be present when the inmate "remains cut off from his normal life and isolated in a 'police-dominated atmosphere,' *Miranda v. Arizona*, 384 U.S. 436, 456, . . . where his captors 'appear to control [his] fate.' *Illinois v. Perkins*, 496 U.S. 292 . . . ." *Shatzer, supra* at 1216, 1221. So both *Shatzer* and the Sixth Circuit relied on the well-worn principles of *Miranda*.

This approach breaks no new legal ground, nor does it impose a new obligation on the States and the Federal government that they did not have before the decision in the instant case. The requirement that an inmate be advised of his rights where there is both interrogation and isolation is not a new obligation. Even before *Mathis*, an inmate removed from the general population and questioned about conduct occurring outside the prison would have had to have been Mirandized because *Miranda* made no exception

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[4] This bright-line approach was recently used to reject a finding of Miranda custody because the inmate was questioned by a prison guard about a fight occurring within the prison. *Wilson v. Cain*, ___ F.3d ___, 2011 WL 1792073 (CA. 5 LA).

for the prison setting. The Sixth Circuit's approach merely makes it easier to apply the principles flowing from clearly established Supreme Court precedents.

Contrast this approach with the bright-line rule announced in *Shatzer* requiring the re-advice of rights 14 days after their assertion if the inmate has been returned to the general prison population. This imposed a new obligation on interrogating officers.

The bright-line approach has the same virtue found in *Miranda*. It informs "police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and it informs courts under what circumstances statements obtained during such interrogations are admissible." *Fare v. Michael C.*, 442 U.S. 707, 718 (1979). If officers are entering a prison to question an inmate about conduct occurring outside the prison, and if they isolate the inmate from the general prison population, the inmate must first be advised of his rights. Any exceptions proposed by Petitioner would detract from the clarity and the simplicity of this rule. See also *Berkemer v. McCarty*, 468 U.S. 420 (1984) (applying *Miranda* to some traffic stops but not to others would erode the clarity and simplicity of the rule).

Thus the bright-line Petitioner complains of is not one which holds that prison custody is sufficient for Miranda custody because that was not the holding of the Sixth Circuit. Rather the bright-line is the one separating an inmate from the general prison population, sequestering him with his interrogators, and

making him dependant on them to return to the prison population. *Shatzer* merely confirms this. Nothing in the Sixth Circuit Court of Appeals' decision requires the advice of rights if a prisoner wants to volunteer information. Nothing in the Sixth Circuit Court of Appeals' decision requires the advice of rights before on-the-scene questioning may occur.

The Petitioner cannot point to any clearly established Supreme Court law which would permit officers to omit the advice of rights in the prison setting. The State court's refusal to follow clearly established Supreme Court law was contrary to and an unreasonable application of the holdings in *Miranda*, *Mathis*, *Mathiason*, and *Perkins*.

If *Miranda* thought its decision rested on long recognized principles, this Court cannot find that the Sixth Circuit's bright-line approach to interrogative custody was not also based on clearly established Supreme Court law.

C. That no circuit, other than the Sixth Circuit, has used a bright-line approach is not decisive where it was the only one to be presented with a fact situation identical to the one found in *Mathis*.

Petitioner contends that the Sixth Circuit reasoning must be flawed since no other circuit interpreted *Mathis* as establishing a bright-line rule. Petitioner is incorrect in arguing that the bright-line approach is

based only on *Mathis*. It is also based on *Miranda*'s holding that the rights must be given where there is incommunicado interrogation and official questioning. Moreover, a brief review of the cases cited by Petitioner shows that only the Sixth Circuit has been confronted by facts almost identical to those found in *Mathis*. Petitioner's cases all fit within one of the exceptions to the advice-of-rights requirement recognized in *Miranda* itself.

The first exception is not really an exception, but a condition precedent to the application of *Miranda*. That condition is "custody". When the suspect is not in custody, the interrogation is not inherently coercive. Only custodial interrogation isolates and pressures the individual even without employing brutality or the third degree. It exacts a heavy toll on individual liberty and trades on the weakness of individuals. *Miranda, supra* at, 449-450, 455; *Dickerson v. United States*, 530 U.S. 428, 435 (2000). If there is no custody, *Miranda* does not apply. Into this first category, *United States v. Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999), falls. Ozuna was being questioned by customs and immigration agents as he was trying to enter the United States. The Sixth Circuit held that routine questioning did not require the advice of rights. Some further restriction on one's freedom was necessary. This was a non-inmate and a not-in-custody case. There would be no reason for the Sixth Circuit to look to *Mathis* as controlling precedent.

The second and most obvious exception is where the statement is voluntarily made. This occurs where

the inmate consents to the questioning or initiates the contact with the authorities or where other factors make the statement voluntary. *Miranda* is not applicable because "[v]olunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding . . . ." *Miranda, supra* at 478. If a statement is volunteered, *Mathis* would not apply.

A recent example of this is *United States v. Ellison*, 632 F.3d 727 (1st Cir. 2010) (Souter, J.) in which an inmate who was also awaiting trial for burning his ex-girlfriend's house, was voluntarily talking with a police officer. He let it be known that he could also provide information on a robbery committed by his ex-girlfriend occurring in another jurisdiction. The next day he met with another officer in the prison library. He gave a statement implicating the girl friend in the robbery and, in so doing, implicated himself.

Relying on *Shatzer*, the Court found that lawful imprisonment imposed on conviction for a crime did not create the coercive pressures identified in *Miranda*. *Ellison*, at 729-730. Justice Souter went on to explain that freedom of movement was just one factor to look at when deciding whether an inmate is in Miranda custody. There must be a further deprivation on top of ordinary prison custody and *Ellison* did not present any other facts that would create a coercive atmosphere. The Court also noted that Ellison asked to talk to officers and that the questioning occurred in

the prison library where there was a button which he could press to summon a guard.

The First Circuit also stated that coercion was absent because prison officials could not affect the sentence length of an uncooperative prisoner. This is a limited view of life behind bars especially in light of this Court's 48-page expose of prison conditions in California. *Brown v. Plata*, 131 S. Ct. 1910 (2011). Coercion comes in all forms and is not necessarily related to the length of one's sentence.

Voluntariness also relieved the need to give the warnings in *Leviston v. Black*, 843 F.2d 302 (8th Cir. 1988) (defendant while incarcerated on a misdemeanor called the police and asked to speak to officers about a robbery) and in *United States v. Turner*, 28 F.3d 981, 983 (9th Cir. 1994) (defendant, in jail on unrelated state charges, called the postal agent and asked him questions about the investigation and then answered a few himself).

In *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994), the interrogating officers went to extraordinary lengths to insure that the meeting with the inmate was as non-coercive as possible. Before the meeting, the officers faxed the inmate the questions they would ask so that the defendant could decide if he wanted to meet with them. He could have declined the meeting by fax. When they met with him, they told him he was free to leave at any time and that he could terminate the interview at any time. The door to the interview room was not locked. One other

factor proved significant. The inmate was in a facility where it was generally understood that one did not have to meet with law enforcement officers. Although the meeting was not inmate-initiated, the Seventh Circuit concluded that the inmate entered into the meeting knowingly and voluntarily. There were also no added impositions on his freedom of movement nor any measure of compulsion beyond his imprisonment. *Menzer* at 1232.

In *Georgison v. Donelli*, 588 F.3d 145 (2d Cir. 2009), the inmate was in prison on a robbery conviction when detectives came to the facility to interview him about a three-year old assault charge. As in *Menzer*, there was no facility requirement that inmates speak with law enforcement personnel. The corrections officer, not the interrogating officers, asked Georgison if he was willing to talk with police detectives. He consented to the interview which was held in the visitors' room of the prison. The corrections officer waited outside the room while the conversation occurred. During the interview, the inmate unknowingly made some admissions. He was then offered the opportunity to become "a rat" to which he took umbrage. He immediately terminated the interview and walked out of the room.

While the Second Circuit did not mention a bright-line approach, it certainly engaged in the kind of analysis that the Sixth Circuit used in this case. It found that there were no restrictions on the inmate's freedom over and above ordinary prison confinement. The inmate consented to the interview. The interview

was conducted in a visiting room. Thus there was no coercive pressure brought to bear that tended to undermine Georgison's will or compel him to speak. This was supported by the fact that Georgison left the visiting room at a time and in a manner of his choosing. The Court concluded that

> . . . the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here. There was no 'measure of compulsion above and beyond that inherent in custody itself,' . . . Georgison was not 'subjected to restraints comparable to those associated with a formal arrest,'. . . .

Georgison at 157 (internal citations omitted).

In *Alston v. Redman*, 34 F.3d 1237 (3d Cir. 1994), the statement was found to be voluntary because the inmate was advised of his rights on two separate occasions and waived them. In between the two, he met with a public defender and signed a document stating that he would only be interviewed with a lawyer present. There is some question about whether this document was ever transmitted to the warden. The major issue here was the admissibility of the second statement under *Edwards v. Arizona*.[5]

Lastly, in *United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988), the inmate was talking voluntarily to an old girl friend who had, unbeknownst to

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[5] 451 U.S. 477 (1981).

him, agreed to wear a wire. The Second Circuit relied upon the fact that the conversation was voluntary to affirm the conviction. This case was similar to *Perkins* in that the inmate was not subjected to official interrogation so the element of coercion was absent.

The third *Miranda* exception is for on-the-scene questioning. "General on-the-scene questioning as to facts surrounding a crime . . . is not affected by our holding." 384 U.S. at 477. Into this category falls *Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978). After a fight, Cervantes was being transferred from one jail cell to another. He was taken to the prison library so a shift commander could talk with him. He deposited all of his belongings on a table outside the library. Per jail regulations, a guard was required to conduct a search of them. He found a green odorless substance in a match box. The guard entered the library and asked the inmate "What's this?" Cervantes admitted that it was marijuana.

The Ninth Circuit found that *Mathis* did not eliminate the on-the-scene-questioning exception to *Miranda* merely because of inmate status.

> The questioning of Mathis by a government agent, not himself a member of the prison staff, on a matter not under investigation within the prison itself, may be said to have constituted an additional imposition on his limited freedom of movement thus requiring Miranda rights. . . . At the same time, *Mathis*, so interpreted, does not bar all instances of the on-the-scene questioning so

> carefully excluded from the Miranda requirements.

Cervantes, 589 F.2d at 427. But it rejected a freedom of movement test for Miranda custody as not being useful in the prison setting. Instead it noted with approval *Mathiason*'s test which looked to see if there was a restriction on a prisoner's freedom to depart.

> The concept of 'restriction' is significant in a prison setting, for it implies the need for a showing that the officers have in some way acted upon the defendant so as to 'deprive (him) of his freedom of action in any significant way,' *Miranda v. Arizona* (citation omitted). In the prison situation, this necessarily implies a change in the surroundings of the prisoner which results in an added imposition on his freedom of movement.

Id. at 428. The *Cervantes* Court acknowledged that questioning by an officer who is not a member of the prison staff constitutes "an additional imposition on [the prisoner's] limited freedom of movement thus requiring Miranda warnings." *Id.*

The on-the-scene exception was also found in *United States v. Conley*, 779 F.2d 970, 973 (4th Cir. 1985). An inmate, possibly injured during an assault, was in a conference room waiting to see medical staff. The prisoner initiated the conversation with the guard by asking, "What's going on?". The Fourth Circuit agreed with *Cervantes* that a prison inmate is not automatically in custody within the meaning of *Miranda*.

> . . . otherwise [requiring warnings] would seriously disrupt prison administration by requiring, as a prudential matter, formal warnings prior to any of the myriad informal conversations between inmates and prison guards which may touch on past or future criminal activity and which may yield potentially incriminating statements useful at trial.

The Court also noted that such a requirement would provide greater protection to prisoners than to their non-imprisoned counterparts.

These same concerns were also expressed in *Garcia v. Singletary*, 13 F.3d 1487, 1491-90 (11th Cir. 1994), another on-the-scene questioning case. An officer observed a fire in a cell. He removed the inmate, doused the flames, and then asked Garcia why he set the fire. Pursuant to *Cervantes*, the *Garcia* Court found that *Mathis* did not impose a per se rule because inmates would have greater rights than non-inmates and because the inmates freedom of movement was not further diminished. See also *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984) (*Miranda* did not apply to on-the-scene questioning of an inmate after the inmate was locked in his own cell and the officer stood outside it and asked about the assault).

Of these 12 cases from 10 of the circuits, not one involved an inmate who was actually removed from his place of confinement to a different location. Not one involved an inmate separated from his familiar surroundings by a locked door. Not one involved an

inmate subjected to prolonged interrogation. Out of these 12 cases, one concerned a not-in-custody immigrant. One involved a *Perkins* situation where coercion was lacking because the inmate was not being questioned by officers. One, in fact, concerned a Mirandized inmate. Four involved on-the-scene questioning. The remaining five were all instances of voluntary statements. In that latter category, three of the inmates actually called the police; one consented to the interview after receiving the questions by fax; one, Georgison, consented to the interview after the officers arrived at the prison.

All of the above cases are factually distinct from Respondent's. He did not consent to the interview. He did not contact the officers and invite them to the prison. He was not responding to on-the-scene questioning. He was removed from the jail itself. He did not have a magic button to press to summon his jailers to end the interrogation. He was being interrogated about a crime that occurred outside of the prison. Only Respondent's case presented a combination of factors which required the advice of rights.

Therefore, it is not surprising that no other circuit has had occasion to adopt a bright-line approach since all of their cases fell into exceptions to the Miranda rule. It would only be the kind of case that is now before this Court where there was ordinary prison custody plus the further restriction of being removed from and isolated from the general prison population that a court might analyze the case

in terms of a bright-line approach. Four cases, *Cervantes* relying on *Mathiason*, *Ellison* relying on *Shatzer*, *Georgison*, and *Menzer* try to arrive at a test for Miranda custody just as the Sixth Circuit did in this case. The Sixth Circuit's approach of isolation from the general prison population can be said to include the tests discussed in those four cases. If one is isolated in that setting, one's freedom of movement is completely restricted.

D. The circumstances of Respondent's interrogation demonstrate that he was in Miranda custody.

In the case at bar, the trial court held that because the officers told defendant he was free to leave, he was not in custody for Miranda purposes. Res. App. 8a. The Michigan Court of Appeals described the facts of the case as follows:

> At trial, Deputy Batterson testified that he removed defendant from his cell, where he was jailed on domestic assault, and led him to a conference room. He told defendant that he wanted to speak with him in regard to the victim whom defendant indicated he knew. The interview began around 7:00 or 9:00 p.m. and ended around midnight. Defendant was not read his Miranda rights, but Deputy Batterson told him he was free to leave the conference room and return to his jail cell. Deputy Batterson told defendant that there had been allegations of a sexual nature involving the victim. Defendant stated that he

> was a fatherly figure to the victim. Although defendant did not initially acknowledge any sexual relations, ...

Pet. App. 54a-55a. The state appellate court concluded:

> Here, defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although defendant was not read his Miranda rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because Miranda warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

Pet. App. 56a. This decision was contrary to the principles flowing from *Miranda* and *Mathis*, and also from *Mathiason* and *Perkins*. It was also an unreasonable application of those principles to the facts of this case. 28 U.S.C. 2254(d)(1).

Deputy Batterson testified that he had Defendant's jailers take him out of his cell and bring him to a conference room on a different floor in the main part of the Sheriff's Department, away from the jail. He was dressed in jail oranges. He was told that he was free to leave. Pet. App. 70a. The detective admitted that Defendant could not have just gotten up and walked out of the room. He would have had to wait until a corrections officer came to escort him back to the cell. Res. App. 21a-23a. Deputy Sharp testified that the Respondent was never advised that he did not have to talk to the deputies. Pet. App. 135a.

Defendant testified that he knew he could not freely leave the room. He was frightened of Deputy Batterson. He did not know how to get back to his cell from the conference room. The door was shut and he knew that the J door was locked. Pet. App. 67a-77a. Both Batterson and Sharp were armed. Pet. App. 74a. The interrogation ended three hours after he would normally be asleep. This also meant that he missed taking his medication at 10:00 p.m. Pet. App. 77a-80a. When Respondent asked to leave it took 20 minutes for a corrections officer to arrive to return him to his cell and during that time he was still being questioned. He had twice told the officers that he did not want to talk anymore, but his assertions were not honored. Pet. App. 89a-93a.

The interrogation occurred in the evening, after hours. The detectives stayed for six hours, well past 1:00 a.m. and well past the time at which the Petitioner would have gone to sleep. It lasted approximately six hours, a period of time longer than any interrogation with which Deputy Sharp was familiar. Pet. App. 129a.

Questioning was done for the purpose of obtaining incriminating statements about conduct occurring outside the prison. His admissions only occurred near the end of this lengthy interrogation period. Pet. App. 123a-124a. The questioning was not cordial. A sharp tone was used, along with swearing and yelling. Pet. App. 76a-77a, 89a, 130a.

Petitioner points out, on page 33 of its Brief, that Respondent said that he felt like he was in a safe environment. But that comment was made in reference to while he was still in the jail, not to the time period after he passed through J door.

> Q. Would it be safe to say that you were fairly trusting that they weren't taking you anyplace terrible?
>
> A. No, it – actually, it was – I thought I was just I didn't know where I was going; no one ever said where I was going.
>
> Q. Okay. But you didn't ask. Is that –
>
> A. No, I did not.
>
> Q. So you weren't worried about where you were going?
>
> A. I felt like I was in a safe environment.
>
> Q. You went through the J door. Did you still feel like you were in a safe environment?
>
> A. I asked where I was going when I got to the J door.

Pet. App. 87a-88a. So once Respondent arrived at J door he became concerned enough to make inquiry.

The Government argues that the conference room was not claustrophobic, but there is nothing in the record from which the Government can draw this conclusion. The absence of any mention of a window might just as easily lead to the opposite conclusion. The description of the conference room is not much

different from a standard interrogation room, except for the large conference table and the white board. Despite these two amenities, Respondent was still removed from the general prison population. He was still in a room at the mercy of his interrogators. His freedom of movement was restricted to that one room and he knew he could not leave that room without an officer escorting him back to his cell. He knew in fact that there was at least one locked door he would have to pass through to get back to his cell. If it had been possible for him to leave that room under his own steam, could he even find his way back to his cell? If he refused to talk and walked out of the room, would the interrogating officers report that he was loose? What would happen if he was found wandering around the Sheriff's Department in jail oranges unescorted? Would he be accused of attempting to escape? Or would he receive an "out-of-place" ticket?

Although Petitioner writes that Respondent was **repeatedly** told he was free to leave, citing to four pages in the transcript,[6] he was not told this on four separate occasions. He was told this when he first entered the room by Batterson, 70a, and again by Batterson when Batterson was yelling and swearing at him, 89a. The reference to page 90a by Petitioner is again to the incident where Batterson is yelling at him. On page 92a, the last of Petitioner's cites, there

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[6] Petitioner's Brief at page 36.

is only a discussion of what Respondent's understanding was of his ability to leave the room.

Moreover, a prisoner being told he is free to leave is only one of numerous factors to look at to decide if one is in custody. *Yarborough v. Alvardo*, 541 U.S. 652, 653 (2004). No reasonable person in Respondent's place would have felt free to terminate the interrogation and leave the room. *Keohane*, 516 U.S. at 112. Significantly on the issue of whether defendant felt free to leave is the fact that the time for taking his anti-rejection medicine had passed and yet the defendant did not feel he could ask to leave the interrogation room to take these medications. Pet. App. 78a-80a.

In his concurrence, Judge McKeague also mentioned that Fields knew he could leave. Pet. App. 29a fn.3. But Respondent testified that he did not feel he could leave. Pet. App. 71a-72a. He did not even know where he was nor how to get back to the jail. Pet. App. 74a-77a. He had never been on that side of the Sheriff's Department before. Pet. App. 75a. He would have needed an escort to return to his cell. Unlike *Cervantes* and *Ellison*, there was no button for him to push so he could summon his jailers. He was at the mercy of his interrogators.

The encounter between the Respondent and the two detectives was neither voluntary nor on-the-scene questioning. Fields was clearly in Miranda custody at the time of the interrogation and not just because he was serving time on a disorderly conduct conviction.

He was isolated from the other prisoners and from his jailers. He was in a new location, one with which he was not familiar. His interrogators were not affiliated with the prison. He was removed from the jail at a time and in a location where there would not be much foot traffic. He was not told that he did not have to talk with the deputies. Batterson and Sharp created a coercive atmosphere. The Respondent was in Miranda custody.

A strong presumption also exists that a statement taken after prolonged incommunicado interrogation, six hours in this case, is the product of coercion. *Miranda*, 384 U.S. at 476.

Petitioner errs when it argues that this case is similar to *Ellison* where the inmate asked to speak to the officers because he was trying to exact revenge on a girl friend, was still within the jail proper, and had the power to summon his jailors at the touch of a button. Nor is this like *Georgison* where prison policy gave him the option to speak to the officers and a guard, not an interrogating officer, asked him if he would talk to them. He consented to the interview which took place in a visitor's room. The prison guard remained outside the visitor's room during the interview. Unlike Georgison, the Respondent did not remain in familiar surroundings. Unlike Georgison, he was never informed by anyone that he could refuse to talk with detectives. Unlike Georgison, the people interrogating him were armed. Unlike Georgison, he was not interrogated in a prison visitor's room. Unlike Georgison, he could not get up and leave but was

dependent on his interrogators to contact his jailers so he could be returned to the jail. The fact that he was in danger of organ rejection because he missed taking his medication on time and yet did not end the interrogation shows that he did not feel empowered to do so.

Nor is this case like *Mathiason* where a parolee, a person not in prison, was asked by phone if he would speak with an officer and was asked where he would like to have the conversation. When Mathiason said it did not matter to him, arrangements were made to talk in a parole office in a building which housed several state agencies. The parolee arrived on his own and left on his own. *Miranda* was not required in these cases, *Ellison*, *Georgison*, and *Mathiason*, because the setting of the interviews was not coercive and the conversations were voluntary.

Of course, the element of ordinary prison custody was also lacking in *Mathiason*, as it was in two of the cases cited by the United States. In *United States v. King*, 604 F.3d 125 (3d Cir. 2010), the Court applied a five-factor test to determine custody, but one factor dominated. King called the FBI to make arrangements to come in and talk with the agents. This weighed heavily in favor of a finding of voluntariness. In *United States v. Jamison*, 509 F.3d 623 (4th Cir. 2007), the defendant was a felon who accidentally shot himself. He was questioned by officers at the hospital. The Court found that the hospital impeded his freedom of movement not the officers. Like

Mathiason, these are not prison cases. Only in the prison cases is it more likely that the environment might be coercive.

The Government deems all of the facts Respondent points to as indicia of a coercive environment as just baseline restrictions attendant to ordinary prison custody. But isolation from the general prison population is not a baseline restriction. It was exactly this kind of custody, incommunicado interrogation, that *Miranda* found to be constitutionally abhorrent. This isolation meets the "custody plus" test of *Shatzer*.

The Government, in trying to discount the fact that the deputies were armed, compares it with the fact that the police are armed during a traffic stop and this Court has refused to find such a stop the equivalent of custody. *Berkemer*, 468 U.S. at 437-439. This comparison is inapt. A traffic stop occurs in the open, not in isolation, so the presence of the weapon is not a threatening factor. On the facts of this case, the guns contributed to the coercive pressure of the incommunicado interrogation. Further a driver stopped for an infraction knows that the restriction on his freedom of movement will be brief and he is not at the mercy of the officers. *Id.* at 437-438. A prisoner, at the mercy of interrogating officers, has no such expectation. He knows he is in for the long haul.

Petitioner contends that the case at bar is factually distinct from *Mathis* because Mr. Fields is highly educated, he was aware that a criminal matter was

being investigated, and told that he could leave the interview whenever he wished. Pet. Brief at 30. While Mr. Fields is educated, he has never been to law school. His area of expertise is social work, not law. There were no facts from which to infer what Mathis' education level was, but he was educated enough to have the kind of tax problems that interest the IRS. There is no Miranda exception for people that are college graduates. In fact, a suspect's individual characteristics, unless they are children, are not relevant on the decision as to whether the suspect should be advised of his rights. *Miranda, supra* at 468-469; *JDB v. North Carolina*, 564 U.S. ___ (2011). Otherwise, as pointed out in Justice Alito's dissent in *JDB*, courts would be spending precious judicial time on examining the sensitive suspect and the pliable prisoner.

The instant case falls squarely within the ambit of *Miranda* and *Mathis* because the Respondent experienced further restrictions on his freedom of movement than that occurring with ordinary prison custody and he was interrogated by officers unaffiliated with the prison concerning conduct occurring outside the prison. This interaction of official questioning and restrictive custody created a coercive atmosphere undispelled by the advice of rights.

This Court should reject the arguments made by the Petitioner and the Amici that Miranda warnings should not be required in the prison context. A penal environment is a naturally coercive environment. One of the most important aspects of that environment is

to force the prisoner to obey the rules of the prison without questioning them. A prisoner, upon entering a correctional institution, also quickly discovers that many of the rights he enjoyed in the free world are now denied to him. In this situation, an inmate, isolated from the general prison population and being questioned for conduct occurring outside the prison, must be informed that he still retains Miranda rights. Only this simple expedient will dispel the coercive nature of custodial interrogation.

II. In *Miranda*, this Court simplified procedures to be followed during custodial questioning to protect the Fifth Amendment privilege. That privilege will continue to be protected by, and law enforcement and the judiciary will benefit from, a bright-line approach to the question of when a prisoner is in interrogative custody.

As soon as the decision in *Escobedo v. Illinois*, 378 U.S. 478 (1964), was issued, it became the subject of spirited legal debate, scholarly writings and conflicting judicial opinions. This was the first case to require officers to advise suspects of the right to remain silent and to counsel before questioning. Law enforcement was concerned with how to execute the requirements of *Escobedo* and the judiciary was concerned with how to apply its dictates to the facts

before it.[7] In order to resolve the problems arising from the decision and to clarify the opinion, the Court issued its decision in *Miranda v. Arizona* just two years later adopting a bright-line approach. The question of when a prisoner is in custody for *Miranda* purposes would benefit from just such a bright-line approach. It would offer clarity to officers questioning inmates, clarity to Courts in applying the rule, and consistency in the resulting jurisprudence.

A. Isolation from the general prison population and questioning by officers unaffiliated with the facility about conduct occurring outside the prison are the three necessary elements triggering the requirement that warnings be administered.

Using a "freedom of movement" test is not an efficacious one in the prison setting because all inmates have their movements restricted. The Court rejected this as a test for interrogative custody in *Shatzer* calling it only a necessary condition for custody but not a sufficient one. 130 S. Ct. at 1224. Likewise, other baseline restraints which are conditions

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[7] Just three years earlier, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court held that counsel must be appointed for indigent felons. After *Escobedo*, the police were especially concerned about supplying counsel to suspects in the station house before questioning.

of ordinary prison life do not turn ordinary prison custody into interrogative custody. *Id.*

The condition of being isolated from the general prison population would be a useful test. Ordinary prison custody does not involve such isolation. It involves the opposite, a life lived under constant scrutiny in the company of hundreds. Isolation from the general prison population is usually reserved for punishment. Using this test dovetails well with *Miranda*'s holding that isolation from others is the key element contributing to the coercive effect of official questioning.

Shatzer has already recognized that isolation from the general prison population is a line of demarcation. Crossing that line marks either an exit from or a return to ordinary prison life. An inmate isolated from the general prison population is cut off from his normal life thus fulfilling one of the requirements for Miranda custody. Official interrogation fulfills the other. The inmate finds himself in a police-dominated atmosphere where his interrogators appear to be in control of his fate. These facts exert the coercive pressure that *Miranda* was designed to guard against. *Shatzer* at 1224.

Under this test, questioning in the general prison population would not require Miranda warnings, but removing the inmate from that population and isolating him in a cell, a conference room, an empty visitors room would. The maintenance room, nicely outfitted with a desk and three chairs, was deemed to be an

interrogative setting by the *Shatzer* Court. There was no further discussion about whether the inmate thought he was free to leave because the incommunicado aspect of the interrogation was the sufficient condition. This kind of isolation exerts the coercive pressures that *Miranda* was designed to guard against.

The Sixth Circuit's qualifier that the interrogation must concern conduct occurring outside the prison is also an essential factor in the bright-line approach as will be discussed in the next section.

B. The decision of the Sixth Circuit does not confer greater rights on the imprisoned than it does on the unimprisoned, nor does it conflict with administrative concerns within the prison.

The decision of the court of appeals does not, as Petitioner and the United States fear, give prisoners more rights than it does to people who are not imprisoned. This argument is found only in cases like *Cervantes*, *Conley* and *Garcia* where the issue was on-the-scene questioning in the prison setting. The Ninth Circuit in *Cervantes* held that if it adopted the broad reading of *Mathis* as argued by Cervantes and required the advice of rights before there can be any on-the-scene questioning in prison, prisoners would have more rights than nonprisoners. The Ninth Circuit was right. To apply *Mathis* in that fashion without acknowledging that *Miranda* excluded

on-the-scene questioning from the advice of rights requirement would result in greater protection for prisoners. But no case holds that the advice of rights is required before a guard may question an inmate about conduct occurring within the prison. If it did, it would be in direct conflict with *Miranda*.

The Sixth Circuit was not faced with an issue of on-the-scene questioning, so its decision does not grant greater rights to inmates. It wisely limited its holding to conduct occurring outside of the prison, so on-the-scene questioning is not implicated.

In fact, this is a key distinction, but Petitioner asks this Court to reject this distinction while the Government argues in its amicus brief that this distinction informs the custody analysis. The United States' concern is with the disruption to prison administration if corrections officials wanting to talk with a prisoner about matters occurring inside the prison must first give the warnings. The *Conley* Court anticipated this concern finding that a prisoner is not always in custody for Miranda purposes,

> . . . otherwise [requiring warnings] would seriously disrupt prison administration by requiring, as a prudential matter, formal warnings prior to any of the myriad informal conversations between inmates and prison guards which may touch on past or future criminal activity and which may yield potentially incriminating statements useful at trial.

Conley, *supra* at 973.

Cervantes also found that when officers from outside the prison come into the prison to interview an inmate, there is an additional imposition on the inmate's limited freedom of movement. *Cervantes*, *supra* at 428. But this coercive effect is absent if a prisoner is talking to a prison guard, a person with whom he is familiar. In the latter circumstance, warnings would not be required.

Considering the location of the crime in the equation does not endanger a finding of voluntariness. Obviously, if the conduct occurs inside the prison it is more likely to be on-the-scene questioning conducted by prison guards. If the conduct occurs outside the prison, the questioning is more likely to be conducted by outside officers investigating a non-prison crime. It is also more likely to be conducted away from the general prison population and more likely to be marked by additional restrictions on the inmates freedom of movement and therefore be more coercive. These are the very factors which require the advice of rights and which should be considered in deciding whether *Miranda* is applicable.

Neither *Miranda,* nor the Sixth Circuit in this case, intended to limit the use of voluntary statements or statements made as a result of on-the-scene questioning. What both Courts were concerned with is the use of coerced statements and false confessions. Consequently, *Miranda*'s progeny must be read in light of *Miranda* itself. Warnings are not required if a prisoner wants to talk with a corrections official because that would be a voluntary statement regardless

of where the conversation occurs. Warnings are also not required for on-the-scene questioning of a prisoner.

C. Society's need for interrogation does not outweigh the Fifth Amendment privilege.

The *Miranda* Court did not intend to hamper law enforcement efforts to enforce laws and prosecute criminals. It believed that confessions were an important law enforcement tool, yet it also believed that Society's need for interrogation did not outweigh the Fifth Amendment privilege. *Id.* at 477-479. In discussing the tension between the tool and the principle, it came down solidly on the side of the constitutional principle:

> . . . the Constitution has prescribed rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged.

Id. at 479. It noted that the four cases before it that day presented graphic examples of the overstatement of the need for confessions. In each of the cases, considerable evidence had been amassed against each defendant through standard investigative practices. *Id.* at 481.

Two years earlier, these same justices, in *Escobedo*, had observed that as a society,

> We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.

Escobedo v. Illinois, *supra* at 488-489.

Now 45 years after *Miranda* was decided, developments in science and technology have made proof of crime a much easier and more accurate proposition for the prosecution so that reliance on confessions, and the danger of the false confession, can be reduced even more. For instance, in *Miranda*'s year, 1966, a prosecution might have relied on blood typing from body fluids which, if the type was O, would narrow the possible perpetrator to 60% of the population. Now DNA, extracted not just from blood, saliva, or semen, but from hair or other material shed from a body at the scene of the crime, increases that 60% probability to almost 100% accuracy. This Court has called DNA testing powerful new evidence "unlike anything known before." *District Attorney's Office for the Third Judicial District v. Osborne*, 129 S. Ct. 2308, 2316 (2009).

The ubiquity of audio and video equipment also relieves the prosecution from reliance on confessions.

Where there were only bank cameras in 1966, there are now cameras in and around numerous commercial establishments and other public places including some focused on the street by various governmental entities. Cell phones also offer a fertile source from which to discover evidence. A pattern of calls displayed in memory or on a bill can establish that co-defendants, or the suspect and the victim, knew each other, or it can provide circumstantial evidence that they were together at the time of the crime. Data from cell phone towers can place a defendant in the vicinity of a crime at the time it occurred.[8] Cell phones not only offer information about with whom the defendant spoke and where the phone was at the time of its use, but cell phones sometimes provide incriminating photos and text messages.[9] This point is made by the fact that no amount of "enhanced interrogation" led to the discovery of the location of Osama Bin Laden, but a cell phone did.

If a camera uses a flash card, the geotag can be accessed. That tag shows by latitude and longitude, the exact spot from where a photo was taken. Hidden devices in the Apple IPad and 3G IPhones also track

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[8] *People v. Mario Willis*, Mich. COA #298643, appeal pending.

[9] *People v. Kilpatrick*, Wayne County Circuit Court #08-10496. Defendant pled guilty to obstruction of justice. Text messages proved that the Mayor of Detroit lied at a civil trial when he claimed that he had not had an affair with his Chief of Staff.

and store the user's location. These files also store data from cell phone towers and from nearby Wi-Fi locations.[10]

But the mother lode of incriminating evidence, not in use in 1966 but in use now, is the jail phone. All calls an inmate places are recorded. At the Wayne County Jail in the city of Detroit, an employee of the Sheriff's Department reviews hundreds of hours of recordings and if there are useful statements, the call is flagged and turned over to the prosecution.[11]

Likewise, computer hard drives may contain either direct or circumstantial evidence, or negative character evidence. Proof that an online search for a criminal defense attorney was conducted on a home computer just hours after a statement was taken from a murder suspect, was offered in evidence as consciousness of guilt.[12] Social networking sites are also a source of evidence because people persist in writing about or displaying themselves in compromising positions.

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[10] "The New York Times" April 21, 2010 Business Section, B page 1.

[11] In *People v. Orlewicz*, ___ N.W.2d ___ (2011), 2011 WL 234390, six hundred hours of phone calls over a five-month period were reviewed. The prosecution played snippets of conversations between the 17 year-old defendant and his parents. They were used to attack the defendant's character and his defense.

[12] *Id.*

If a confession is truly voluntary, there should be no bar to its admission in evidence. But as the first nation to enshrine the privilege against self incrimination in a written Constitution, we should no longer be relying on confessions extracted from the innocent or the unwary when we have more reliable and more sophisticated means of proof.

CONCLUSION

The judgment of the Sixth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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REPLY BRIEF

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CAROL HOWES, PETITIONER

v.

RANDALL FIELDS, RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF

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INTRODUCTION

The issue presented in this case raises two, discrete sub-questions: (1) whether this Court in *Mathis* v. *United States*, 391 U.S. 1 (1968), created a bright-line rule compelling an official to give a *Miranda* warning whenever questioning an isolated prisoner, and (2) whether the Fifth Amendment requires such a bright-line rule. The answer to both questions is "no."

With respect to the first sub-question, this Court has generally "required police officers and courts to 'examine *all of the circumstances* surrounding the interrogation,' including any circumstances that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'" *J.D.B.* v. *North Carolina*, 131 S. Ct. 2394, 2402 (2011) (quotation omitted, emphasis added). And this Court's precedent has not recognized a bright-line exception to that rule for prisoners. To the contrary, the Court has "never decided whether incarceration constitutes custody for *Miranda* purposes, and ha[s] indeed explicitly declined to address the issue." *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224 (2010).

Relying on a "matrix" of this Court's decisions, Respondent Fields argues that this Court has given special *Miranda* treatment to prisoners. Resp. Br. 8–25. But even he "concedes that the *Shatzer* Court stated that the question of whether prison custody is the equivalent of Miranda custody has never been decided," Resp. Br. 17. Because 28 U.S.C. § 2254(d) bars any habeas remedy unless the right to relief is "clearly established" by this Court's precedent, Fields'

concession, standing alone, requires reversal of the Sixth Circuit's grant of habeas relief.

It is the *Shatzer* opinion that also explains why the Fifth Amendment does not require a bright-line test for prison interviews. Restrictions on movement (as a result of incarceration or otherwise), are a necessary but "not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. "*Miranda* is to be enforced 'only in those types of situations in which the concerns that powered the decision [i.e., threat of coercion and involuntary confessions] are implicated.'" *Ibid.* (quoting *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984)).

Questioning a prisoner apart from the rest of the prison population, without more, does not implicate *Miranda*'s concerns. *United States* v. *Ellison*, 632 F.3d 727 (1st Cir. 2010) (Souter, J.) (restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody"). The present case exemplifies that fact, as Fields repeatedly testified that he understood he could leave his interview. Pet. App. 70a–71a, 91a–92a. Accordingly, the State of Michigan respectfully requests that the Court reject any bright-line *Miranda* rule for questioning prison inmates.

REPLY ARGUMENT

Fields advances four basic arguments. First, he tries to portray the Sixth Circuit's decision as one that "looked to the circumstances of the interrogation" to determine whether the interrogation was coercive, Resp. Br. 16, an approach that would have been consistent with controlling case law. Second, Fields asserts that this Court's precedent has itself established a "bright-line" test for interrogations that occur in prisons, one under which isolation alone is *per se* coercive whenever interrogation relates to conduct that occurred outside the prison. Resp. Br. 8–35. Third, Fields argues that the circumstances of his interrogation demonstrate that he was in *Miranda* custody. Resp. Br. 35–45. And finally, Fields urges this Court to adopt a bright-line approach that applies *Miranda* to virtually all prison interviews. Resp. Br. 45–55. Each of Fields' arguments is without merit.

I. The Sixth Circuit established a new, bright-line test for determining when a *Miranda* warning must be given to a prisoner.

The Sixth Circuit unequivocally created a bright-line test that eliminated the need for any factual inquiry into the interrogation's circumstances. In fact, after stating its new rule, the Sixth Circuit extolled the rule's virtues, calling it "bright line":

> A *Miranda* warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison.

* * *

> *This bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population.

Pet. App. 19a, 20a (emphasis added).

Despite this clear language, Fields claims that the Sixth Circuit "looked to the circumstances of the interrogation in order to see if the element of coercive custody was present." Resp. Br. 16. That claim cannot be reconciled with what the Sixth Circuit actually said, either in defending its rule (noted above), or in its analysis of Fields' circumstances. To the contrary, the Sixth Circuit's opinion disregarded Fields' testimony about being free to leave his interview, because the mere fact that he was in a prison setting was enough to satisfy the *Miranda* custody requirement:

> Though told that he could leave at any time, exiting the conference room was a lengthy process that required a corrections officer to be summoned. Thus, Fields faced the type of "restraint on freedom of movement" necessary to be deemed in custody.

Pet. App. 13a.

In other words, the Sixth Circuit identified a restraint—awaiting corrections officers to retrieve him—that had nothing to do with the circumstances of the questioning itself. It was a limitation that resulted from the fact that Fields was a prisoner. As even the

Sixth Circuit acknowledged, that is a bright-line rule. Pet. App. 19a. It is also a rule that cannot be gleaned from this Court's precedent and, therefore, constitutes an improper basis for granting habeas relief.

II. This Court has never established a bright-line *Miranda* test for questioning prisoners.

This Court has never adopted a *per se* rule compelling an official to give a *Miranda* warning whenever questioning a prisoner in isolation about conduct that occurred outside the prison. Instead, this Court's test for interrogative custody is the same as for every other citizen: considering *all* of the circumstances surrounding the interrogation, would a reasonable person "have felt free to terminate the interview and leave." *Yarborough* v. *Alvarado*, 541 U.S. 652, 665 (2004); *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995). See also U.S. Br. 12–13.[1] As recently reiterated in *J.D.B.* v. *North Carolina*, this Court's approach represents the fact-specific inquiry that the Sixth Circuit bright-line test eschews:

> Rather than demarcate a limited set of relevant circumstances, we have required police officers and courts to "examine *all of the circumstances* surrounding the interrogation," including any circumstance that "would have

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[1] *Amicus* Donovan Simpson's contention that Michigan and the United States have advanced differing positions on this point misconstrues Michigan's brief. Simpson Am. Br. 26. A *Miranda* custody inquiry examines all of the circumstances, and the most compelling fact demonstrating that Fields was free to leave and end the interview here was that he was told this at the beginning of the interview. Pet. App. 70a–71a.

> affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave."

131 S. Ct. 2394, 2402 (2011) (quoting *Stansbury* v. *California*, 511 U.S. 318, 322, 325 (1994)) (emphasis added).

In the face of this Court's pronouncements in *Shatzer* and *J.D.B.*, Fields points to no specific authority that has adopted what he contends is "clearly established," i.e., a "bright-line test" that *Miranda* is required whenever an inmate is (1) isolated from the general prison population, (2) questioned about events that occurred outside the facility, (3) by officers unaffiliated with the prison. Res. Br. 11.[2] Instead, Fields argues that a "matrix" of four cases, when considered together, create this bright-line test. Res. Br. 11–17 (citing *Miranda*, *Mathis* v. *United States*, 391 U.S. 1 (1968), *Oregon* v. *Mathiason*, 429 U.S. 492, 494 (1977), and *Illinois* v. *Perkins*, 496 U.S. 292, 297 (1990)).

Fields is wrong. No authority has proposed this "matrix" analysis, not even the Sixth Circuit. The Sixth Circuit relied exclusively on *Mathis* for its bright-line test. Pet. App. 13a. Fields abandons the Sixth Circuit's approach, instead merely noting that this Court in

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[2] The third element of this test does not appear in the Sixth Circuit formulation of the new bright-line rule. In its two statements of the rule, the Sixth Circuit does not refer to officers unaffiliated with the prison. See Pet. App. 13a, 19a. Fields' characterization of the test here would suggest a strange distinction: that there would have been no need for *Miranda* warnings had the prison officials conducted this interrogation, rather than the deputies from the local county police department.

Mathis stated that "nothing in *Miranda*, called for curtailment of the warnings solely because one was already in custody." Resp. Br. 14. This is the proper understanding of *Mathis*. See U.S. Br. 9 ("the decision only held that *Miranda* can apply to inmates even when their incarceration is for a conviction unrelated to the questioning at issue").

After reviewing the four cases that comprise his new "matrix", Fields lists five principles that "flow" from these decisions. Resp. Br. 15. The first four principles are all positions supported by Michigan in its brief on appeal.[3] But the fifth is that *Miranda* custody sufficient to require warnings in prisons exists whenever there is "isolation from the general prison population and questioning by officers unaffiliated with the facility." Resp. Br. 15. There is no explanation of how this fifth principle is derived from any of the four "matrix" decisions. Indeed, Fields inverts the habeas review standard and claims that Michigan cannot "point to any clearly established Supreme Court law which would permit officers to *omit* the advice of rights in the prison setting." Resp. Br. 25 (emphasis added). Under AEDPA, of course, it is *Fields'* burden, not Michigan's, to identify this Court's clearly established precedent that supports his position. 28 U.S.C. § 2254(a), (d); *Woodford* v. *Viciotti*, 537 U.S. 19, 24–25 (2002) ("it is the habeas applicant's burden to show that the state court applied [Supreme Court precedent]

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[3] "(1) [C]ustodial interrogation requires the advice of rights; (2) *Miranda* travels over prison walls; (3) not every official interrogation in a potentially coercive environment is in-custody questioning; (4) Miranda custody is more than ordinary prison custody[.]" Resp. Br. 15.

to the facts of his case in an objectively unreasonable manner").

Unlike Fields, *amicus* Donovan Simpson says that *Mathis* established the bright-line rule that incarceration equates to *Miranda* custody. Simpson Am. Br. 9–13. But the *Mathis* opinion did nothing more than reject two narrow, government arguments as to why *Miranda* was inapplicable: (1) that the tax investigation was civil, not criminal, and (2) that the defendant was in prison for an entirely separate offense than the one resulting in the questioning. 391 U.S. at 4. In other words, this Court rejected the government's effort to "narrow" the scope of *Miranda* only to circumstances in which the questioning was "in connection" to the case under investigation. *Mathis*, 391 U.S. at 4. *Miranda* is applicable regardless of "why the person is in custody." *Id.*

Thus, while it is true that the *Mathis* Court did not "inquire any further into the particular circumstances of the interviews," Simpson Am. Br. 11, to read that absence of discussion as a bright-line rule would mean that *every* interview occurring in a prison would require *Miranda* warnings, even those where the prisoner was not isolated. Yet *Shatzer* makes clear that this Court has "never decided whether incarceration constitutes custody for *Miranda* purposes." *Shatzer*, 130 S. Ct. at 1224 (citing *Perkins*, 496 U.S. at 299) ("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here"). See also *Ellison*, 632 F.3d at 730 n.1 ("The Court . . . did not say whether the interview with Mathis fell within *Miranda*

because of his incarceration or because of some other deprivation that was significant in the circumstances. Although it did not address *Mathis*, the Court's opinion in *Shatzer* forecloses Ellison's reading of the case for the former proposition.").

Amicus Simpson's reading of *Mathis* does not even make sense. Whether an inmate is questioned by a prison guard or a police officer from outside the prison has no bearing on the key question, whether the interrogation is coercive. *Berkemer*, 468 U.S. at 437. If anything, questioning by a prison official would suggest greater coercion than questioning by an outsider because of the official's ability to control the conditions of confinement. In sum, Simpson's contention—that *Mathis* holds that an inmate is in custody whenever interrogated by officials not affiliated with the prison about conduct occurring outside the prison, Simpson Am. Br. 13—is not supported by *Miranda* or this Court's post-*Mathis* decisions, which reflect a much narrower understanding of *Mathis*.

Fields also tries to argue that the qualifier in the Sixth Circuit test—that the questions relate to "conduct occurring outside of the prison"—makes "all the difference." Resp. Br. 18, citing Pet. App. 1a. But as discussed at length in the Petitioner's Brief, the location of the alleged conduct itself is irrelevant for the consideration about whether the circumstances of the interrogation are coercive. Pet. Br. 31–32. In seeking to justify this distinction, Fields notes that there is no *Miranda* requirement for on-the-scene questioning, and such questioning occurs for conduct that occurred within the prison. Resp. Br. 50. But this

Court in *Miranda* already acknowledged that on-scene questioning does not require a reading of a suspect's rights. *Miranda* v. *Arizona*, 384 U.S. 346 (1966). The Sixth Circuit's distinction is unnecessary. And once that distinction is stripped away, all that is left of the Sixth Circuit's test is the requirement that a suspect be isolated.

Fields suggests that isolation from the general population is the kind of "incommunicado interrogation" that *Miranda* found to be abhorrent. Resp. Br. 43. But for a prisoner who knows that he may end the interview at any time, this is no different than conducting an interview at the police station, which does not always require a *Miranda* warning. *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977) ("there is no indication that the questioning took place in a context where respondent's freedom to depart was restricted in any way").

This argument also is belied by the practical aspects of a police interview. The suggestion that the police should question Fields in front of other prisoners about whether he engaged in sexual intercourse with underage boys is detached from the practical reality of police investigation. As a general matter, all police interrogation about crime that occurred outside the prison will occur by separating the prisoner from the other prisoners. And based on the Sixth Circuit standard, such interrogations will also have to begin with the provision of *Miranda* warnings. As a consequence, under the Sixth Circuit's rule, prisoners will paradoxically have greater protection under the Fifth Amendment than will ordinary citizens. This test is not constitutionally required and is not required by

Miranda. Rather, for prisoners as for everyone, this Court should look to *all* the circumstances to determine whether the person's liberty was impaired by the interrogation and whether the person was free to leave the interrogation.

The Sixth Circuit's *per se* rule would effectively require *Miranda* in every interview of a prisoner about conduct that occurred outside the prison. Even where the prisoner was taken to an open area, like a library, and informed about his freedom to leave and return to his cell, and was able to do so on his own accord without escort, the *Miranda* warnings would still apply. Cf. *Ellison*, 632 F.3d at 728 (interview in jail library where police officer told prisoner "that he was not under arrest for these crimes, did not have to answer any questions, and was free to end the interview at any time by pushing a button on the table to summon the guards."). Such an understanding of *Miranda* would detach the case further from its Fifth Amendment moorings, which is rooted in protecting suspects from compulsory self-incrimination.

Ultimately, however, this Court need look no farther than *Shatzer*. Even Fields now "concedes that the *Shatzer* Court stated that the question of whether prison custody is the equivalent of *Miranda* custody had never been decided." Resp. Br. 17. And this Court has never taken the next step and equated the questioning of a prison inmate in isolation with *Miranda* custody, either. As discussed below, this concession is fatal. If the Sixth Circuit's bright-line rule is not "clearly established" by this Court's precedent, and traditional *Miranda* analysis applies, then the state court ruling—that Fields was entitled to

no *Miranda* warnings because the officers conducting his interview told him he was free to leave and imposed no limitation on Fields apart from those naturally arising from his status as a prisoner—is entitled to deference.[4]

III. Under this Court's clearly established case law, Fields was not entitled to a *Miranda* warning.

To reiterate, this Court's historical *Miranda* test requires an examination of all the circumstances to determine if "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Keohane*, 516 U.S. at 112. As discussed at length in the Petitioner's Brief, Pet. Br. 6–9, 33–37, the record is clear that Fields knew that at any time, he could end his interview and leave. Pet. App. 70a–71a, 91a–92a. The officers imposed no limitations on him in addition to those related to his confinement as a prisoner. Thus, even in the absence of AEDPA deference,[5] habeas relief was inappropriate because Fields was not in custody for purposes of *Miranda*.

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[4] The Simpson *amicus* contends that *Shatzer* supports the Sixth Circuit's decision because the duration of an inmate's separation is dependent upon "his interrogators." Simpson Am. Br. 18, citing *Shatzer*, 130 S. Ct. at 1225 n.8. But where the inmate has been informed, as here, that he may return to his cell whenever he wishes to do so, the only real limitations on his liberty are imposed by virtue of the conditions of being a prisoner. Pet. App. 89a ("I was told, if I didn't want to cooperate, I could leave").

[5] Trying to avoid AEDPA deference, Fields erroneously asserts that the state courts relied on the very test rejected by *Mathis*, Resp. Br. 8, i.e., that *Miranda* is not required when the interrogation is on a matter unrelated to the incarceration. The

Despite his testimonial admissions, Fields asserts that he did not feel free to leave, that he was frightened, and that Detective Batterson "commanded him to remain seated." Resp. Br. 2. But that summary leaves out an important part of the story.

Several hours into his interview, Fields was confronted with the allegations of sexual abuse. Pet. App. 80a–81a. When officers refused to believe Fields' version of events, he got out of his chair and began yelling. Pet. App. 125a–126a. It was at this time, when Fields was out of his seat and yelling, that Batterson "commanded" him to remain seated.

Even during this incident, Fields was reminded that he could leave. Fields admitted "I was told, if I didn't want to cooperate, I could leave." Pet. App. 89a. He now asserts, however, that the Deputy "never got someone to take him back to his cell." Resp. Br. 4. That is because he never asked. To the contrary, when faced with the possibility of being returned to his cell, Fields stopped yelling, sat back down, and continued the interview. Pet. App. 125a–126a.

The other circumstances surrounding the interview were likewise not coercive. For example, it is true that

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Court of Appeals did mention that fact, but went on to explain that *Miranda* warnings were not required because the officers told Fields he was free to leave. Pet. App. 56a ("Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement."). As Judge McKeague observed in his Sixth Circuit concurrence, the Michigan Court of Appeals "applied the correct, context-specific *Miranda* custody test." Pet. App. 28a.

Fields was wearing prison garb, escorted to the conference room, and that the officers were armed. Resp. Br. 36–37. But these are ordinary circumstances of daily prison life. They impose no greater restriction on a prisoner's movement, nor any coercive force, beyond routine incarceration.

Fields also makes much of the fact that the J-door was locked, Resp. Br. 37, a fact unsurprising to prisoners, as the J-door is the door to the jail itself. Far more important than the door to the jail is the door to the conference room in which Fields was interviewed. That door was left standing open for part of the interview and shut for part of the interview. Pet. App. 72a. Indeed, as Fields clarified, that door was "shut," not locked like the J-door. Pet. App. 74a. Like prison garb and transportation with an escort, locking the door to the jail is incidental to and an ordinary condition of incarceration.

As strong as this case was on direct review, it should have been even stronger on collateral habeas review. Not so, argues Fields, because "Petitioner cannot point to any clearly established Supreme Court law which would permit officers to omit the advice of rights in the prison setting." Resp. Br. 25. This fundamental misunderstanding of habeas review echoes the District Court's erroneous conclusion that the state courts unreasonably interpreted *Mathis* because "Although some federal circuit courts have restricted *Mathis*, . . . this Court is bound by clearly established federal law as determined by the Supreme Court." Pet. App. 43a.

Both the plain language of 2254(d) and this Court's precedent make clear that it is the habeas *petitioner's*

burden to demonstrate that the state-court decision at issue was contrary to, or an unreasonable application of, this Court's clearly established precedent. In making that determination, the interpretation of this Court's precedent by other federal courts provides context to the reasonableness of the state courts. See *Price* v. *Vincent*, 538 U.S. 634, 643 n.2 (2003). The fact that no other circuit has found a bright-line rule for custody in the prison setting demonstrates Fields' inability to establish an unreasonable application.[6] There is no concomitant burden placed on state courts to *refute* a prisoner's claim with this Court's clearly established precedent.

Similarly, Fields misapplies the discussion in *Williams* v. *Taylor*, 529 U.S. 362, 382 (2000), explaining that the application of a general rule to a specific set of facts does not create a new rule. Fields cites this language for the proposition that the Sixth Circuit did not create a new rule, but rather, applied a general rule to the facts of this case. Resp. Br. 10–11. That argument is belied by the Sixth Circuit's own words: "*This bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in

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[6] One would be hard-pressed to say the Michigan Court of Appeals was objectively unreasonable for failing to apply the bright-line rule newly created by the Sixth Circuit. No other circuit has discovered such a rule in *Mathis* or any "matrix" of cases. Like the Sixth Circuit, Fields misses this point and instead takes great pains to factually distinguish the cases from other circuits. These cases are not offered as precedent, but indicia of the objective reasonableness of the state court in failing to discern a bright-line rule loitering within a "matrix" of this Court's precedent.

isolation, away from the general prison population." Pet. App. 20a (emphasis added).

Simply put, *Miranda* mandates a fact-specific custody analysis. The Sixth Circuit broke from that precedent when it created a bright-line rule for custody in the prison setting. And without that rule, the Sixth Circuit would be forced to conclude that it was not an unreasonable application of this Court's precedent or the facts to conclude that Fields was not in custody for *Miranda* purposes when he was questioned.

IV. This Court should decline Fields' invitation to create a bright-line *Miranda* rule for prison interviews.

The debate over *Miranda*'s application in the prison setting is of immense practical significance. On the one hand, when officials have already told a prisoner that he is free to stop an interview and return to his cell, there are virtually no benefits to compelling officials to provide a *Miranda* warning. Conversely, there are substantial costs to creating such a rule, including the exclusion of truly voluntary confessions (like the one here), and the loss of voluntary confessions the rule would deter law-enforcement officials from trying to obtain in the first instance.

"Voluntary confessions are not merely 'a proper element in law enforcement,' they are an 'unmitigated good,' 'essential to society's compelling interest in finding, convicting, and punishing those who violate the law.'" *Shatzer*, 113 S. Ct. at 1222 (numerous quotations omitted). Our law should facilitate criminal confessions, provided that the circumstances surrounding the confession are not coercive. This Court

in *Miranda* adopted prophylactic measures to ensure that police questioning never compelled an individual "to speak where he would not otherwise do it freely." *Id.* at 1219 (quoting *Miranda* v. *Arizona*, 384 U.S. 436, 467 (1966)). Nothing in the circumstances here suggests that Fields' confession was anything but freely given. And nothing in the plain language of the Fifth Amendment or the *Miranda* opinion itself suggests that law-enforcement officials should be deprived of the opportunity to show that a confession was voluntary under all the circumstances, simply because the interview took place in a prison.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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Dated: August 2011

AMICUS CURIAE BRIEF

No. 10-680

In the Supreme Court of the United States

CAROL HOWES, WARDEN, PETITIONER

v.

RANDALL LEE FIELDS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The United States will address the following question:

Whether a prisoner is always "in custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), when the prisoner is isolated from the general prison population for questioning about conduct that occurred outside the prison.

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In the Supreme Court of the United States

No. 10-680

CAROL HOWES, WARDEN, PETITIONER

v.

RANDALL LEE FIELDS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether an inmate is necessarily in custody within the meaning of *Miranda* v. *Arizona*, 384 U.S. 436 (1966), when he is isolated from the general prison population for questioning about conduct occurring outside the prison. Although this case arises on federal habeas review of a state conviction under 28 U.S.C. 2254, the Court's view of the underlying *Miranda* question has substantial implications for federal criminal investigations and trials. Accordingly, the United States has a significant interest in this case.

STATEMENT

Following a jury trial, respondent was convicted in the Circuit Court for the County of Lenawee, Michigan,

on two counts of third-degree criminal sexual conduct, in violation of Mich. Comp. Laws Ann. § 750.520d (West Supp. 2001). Pet. App. 53a. He was sentenced to 10 to 15 years of imprisonment. *Ibid.* The Michigan Court of Appeals affirmed. *Id.* at 53a-62a. The Michigan Supreme Court denied respondent's application for leave to appeal. *Id.* at 52a.

Respondent then filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. 2254. Pet. App. 32a. The district court conditionally granted the petition. *Id.* at 32a-51a. The court of appeals affirmed. *Id.* at 2a-30a.

1. In December 2001, respondent was serving a 45-day sentence in Lenawee County, Michigan, for a disorderly conduct conviction. Pet. App. 3a; Pet. 5. On the evening of December 23, 2001, a corrections officer took respondent from his cell and escorted him to a conference room located in the sheriff's department, which was adjacent to the jail. Pet. App. 68a-69a, 77a. Deputy Batterson, a police officer, informed respondent that he and another officer wished to speak with respondent about allegations that he had had a sexual relationship with a minor, Travis Bice. *Id.* at 109a-111a. The conference room door was left open for portions of the interview, and respondent was not physically restrained. *Id.* at 70a-72a. The officers informed respondent that he was free to leave the conference room at any time, and that he did not have to cooperate. *Id.* at 4a. Respondent did not ask to go back to his cell. *Ibid.* The questioning began between 7 and 9 p.m. and ended at approximately 1 or 2 a.m., after respondent indicated that he wished to go back to his cell. *Id.* at 92a-93a; 123a.

Initially, respondent did not acknowledge that he had had a sexual relationship with Bice, but over the course of the interview, respondent admitted to engaging in sexual conduct with Bice on several occasions. Pet. App. 111a-113a; 124a-125a. Eventually, respondent asked to return to his cell. *Id.* at 92a-93a. After 20 minutes, corrections officers arrived to escort respondent back to his cell; during the wait, the police officers continued to question respondent. *Id.* at 89a, 93a.

2. a. Respondent was charged with third-degree criminal sexual conduct, in violation of Mich. Comp. Laws Ann. § 750.520d (West Supp. 2001). He moved to suppress the statement that he had made while he was in jail, arguing that he had been subject to a custodial interrogation without receiving the warnings required by *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Pet. App. 65a-66a. After a hearing at which respondent testified, see *id.* at 63a-107a, the trial court held that the absence of *Miranda* warnings did not render respondent's statement inadmissible. See Br. in Opp. App. 8a; Pet. App. 38a. The court reasoned that although respondent was incarcerated, he "was told that he was free to leave [the interview room], and granted it might have taken a couple minutes for that to be done. He knew that he could do this." Br. in Opp. App. 8a.

Following a jury trial, respondent was convicted on two counts of third-degree criminal sexual conduct and sentenced to a state term of 10 to 15 years of imprisonment. Pet. App. 5a.

b. The Michigan Court of Appeals affirmed respondent's conviction and sentence. Pet. App. 53a-62a. The court rejected respondent's argument that the trial court should have excluded the statement that respondent made while in jail. In the court's view, respondent

was "unquestionably in custody" because he was incarcerated, but because his confinement was "unrelated to the interrogation," there was no "nexus" between his custodial status and the interrogation about his sexual contact with Bice. *Id.* at 56a (quoting *People* v. *Herndon*, 633 N.W.2d 376, 394 (Mich. Ct. App. 2001), appeal denied, 642 N.W.2d 678 (Mich. 2002) (Table)). The court also reasoned that respondent was "told that he was free to leave the conference room and return to his cell," but he did not ask to leave. *Ibid.* As a result, the court concluded, "*Miranda* warnings were not required." *Ibid.*

c. The Michigan Supreme Court denied respondent's application for leave to appeal. Pet. App. 52a.

3. Respondent then filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. 2254. Pet. App. 32a. Respondent asserted, *inter alia*, that he had been subjected to custodial interrogation without being informed of his *Miranda* rights and, therefore, the state trial court should have excluded respondent's statement to Deputy Batterson. *Id.* at 34a, 38a-39a.

The district court conditionally granted the writ, holding that the state courts' admission of respondent's statement represented an "unreasonable application" of the Supreme Court's decision in *Mathis* v. *United States*, 391 U.S. 1 (1968). Pet. App. 43a; see *id.* at 36a (quoting 28 U.S.C. 2254(d)(1)), 45a. The district court observed that *Miranda* warnings are required whenever a suspect is interrogated while "in custody" and that whether a suspect is in custody for *Miranda* purposes "is determined by examining whether a reasonable person in the suspect's position would believe that he or she was free to leave." *Id.* at 41a-42a. In the court's view, the Supreme Court had held in *Mathis* that a prisoner

was "'in custody' and entitled to *Miranda* warnings before a federal agent interrogated him about an offense unrelated to the one for which he was incarcerated." *Id.* at 43a. The court interpreted *Mathis* to hold that *Miranda* applied to custodial interrogations "regardless of the reason why the suspect is in custody." *Id.* at 45a. Because, the court held, the state court had found *Miranda* inapplicable because respondent's "custody was unrelated to the crime under investigation," the state court had unreasonably applied *Mathis*. *Ibid.* Concluding that the state court's admission of respondent's statement was not harmless, the court conditionally granted habeas corpus relief. *Id.* at 45a-48a.

4. a. The court of appeals affirmed. Pet. App. 2a-30a. The court of appeals believed that the "central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison." *Id.* at 10a. Because respondent was isolated from the general jail population when he was questioned, the court held that the state court's admission of respondent's statement was "contrary to" governing Supreme Court precedent. *Ibid.*

The court of appeals found that its decision was "bolster[ed]" by *Maryland* v. *Shatzer*, 130 S. Ct. 1213 (2010). Pet. App. 18a. The court acknowledged that *Shatzer* had held that the restraints on an inmate's freedom of movement that are imposed as an incident to incarceration do not in themselves render an inmate in the general prison population in custody for *Miranda* purposes. *Id.* at 17a-18a (citing *Shatzer*, 130 S. Ct. at 1224). In the court of appeals' view, however, *Shatzer* further held that when

an inmate is questioned away from the general population, that questioning is necessarily custodial. *Id.* at 18a. In drawing that conclusion, the court relied on the *Shatzer* Court's observation that "[n]o one questions that Shatzer was in custody for *Miranda* purposes during the interviews" with law enforcement officers, 130 S. Ct. at 1224, a statement that the court of appeals interpreted as an "unambiguous conclusion" that Shatzer's in-prison interviews with law enforcement were custodial, Pet. App. 18a.

The court of appeals therefore concluded that *Mathis* and *Shatzer* gave rise to a "a bright line test," Pet. App. 18a, namely, that "[a] Miranda warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison," *id.* at 19a. Elaborating on that conclusion, the court explained that when an inmate is isolated for questioning, the questioners control the duration of the inmate's separation from the general population, which may create the impression that the inmate "has no choice but to cooperate." *Ibid.*

b. Judge McKeague concurred on the ground that the court's decision was dictated by binding Sixth Circuit precedent. Pet. App. 22a (citing *Simpson* v. *Jackson*, 615 F.3d 421 (6th Cir. 2010), petition for cert. pending, No. 10-458 (filed Oct. 4, 2010)). In Judge McKeague's view, however, *Mathis* and *Shatzer* did not establish that a person interrogated while in prison on unrelated charges "is automatically in custody or entitled to *Miranda* warnings anytime he is interrogated away from the general prison population." *Id.* at 23a. Judge McKeague therefore would have applied "the normal, context-specific analysis articulated in *Miranda*," *id.* at 24a—namely, whether a reasonable person in re-

spondent's circumstances "would have felt he or she was not at liberty to terminate the interrogation and leave," *id.* at 25a (quoting *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995)). Under that test, he would have held that the Michigan Court of Appeals' decision was neither contrary to nor an unreasonable application of this Court's precedent. *Id.* at 28a. Judge McKeague noted that respondent "was already accustomed to incarceration and its accompanying restraints," such that the need to be escorted to and from the conference room where he was interviewed was a "routine, normal feature[] of his life as an inmate." *Id.* at 29a-30a. In addition, "the fact that [respondent] was told he could leave at any time is of critical significance." *Id.* at 30a. Under those circumstances, "a reasonable person, already imprisoned on separate charges, would have felt free to terminate the encounter and leave." *Ibid.* (internal quotation marks and citation omitted).

SUMMARY OF ARGUMENT

Officers often have reason to question sentenced prisoners about other suspected criminal conduct. But not all such questioning implicates the requirements of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Prison is not, in itself, *Miranda* custody. See *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224-1225 (2010). And even when a prisoner is isolated from the general population for questioning by law enforcement officers, the restraints on the inmate's freedom of movement that arise from background restrictions incident to life in prison do not render the interrogation custodial for purposes of *Miranda*. The court of appeals therefore erred in holding that separating an inmate from the general prison population for questioning about conduct outside the prison automati-

cally implicates a requirement to give *Miranda* warnings.

A. *Miranda* established a set of procedures that police generally must follow when interrogating a suspect who is in custody, in order to protect the suspect's Fifth Amendment right against compelled self-incrimination. 384 U.S. at 467. *Miranda* identified police custody as the point at which additional procedural protections become necessary because interrogation "in a police-dominated atmosphere," *id.* at 445, generates "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely," *id.* at 467. In determining whether a suspect is in custody for *Miranda* purposes, the "ultimate inquiry" is whether, in view of the objective circumstances surrounding the questioning, there has been a "'formal arrest or restraint on freedom of movement of the degree associated with a formal arrest,'" such that a reasonable person would not have felt free to terminate the interrogation and leave. *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995) (quoting *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983)). The Court has emphasized, however, that restrictions on a suspect's freedom of movement are "a necessary and not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. Even when a suspect's freedom of movement is restrained, the situation is custodial only if the circumstances "create the coercive pressures identified in *Miranda*." *Ibid.*; *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984).

B. The court of appeals imposed a bright-line rule that an inmate who is isolated for questioning about events outside the prison is always in custody. The court based its rule on *Mathis* v. *United States*, 391 U.S.

1 (1968), but that decision held only that *Miranda* can apply to inmates even when their incarceration is for a conviction unrelated to the questioning at issue. *Mathis* did not purport to announce any bright-line rule that all prison interviews are custodial. This Court's subsequent decisions confirm that the court of appeals' interpretation of *Mathis* is incorrect.

Whether an inmate isolated for questioning is in custody for *Miranda* purposes therefore turns on the traditional inquiry into the objective circumstances of the interview and whether those circumstances created the coercive pressures addressed in *Miranda*. This Court has held that restrictions incident to incarceration do not create such pressures with respect to inmates in the general prison population. *Shatzer*, 130 S. Ct. at 1224. The same is true when an inmate is isolated from the general population for questioning. Background prison restrictions may limit an inmate's freedom of movement in connection with the interrogation—for instance, by requiring that the inmate be escorted to and from the interview—but they do not exert the coercive pressure to confess that is a necessary element of *Miranda* custody. Such restrictions are expected incidents of daily prison life, rather than unfamiliar measures imposed by the questioning officers, and there is little danger that an inmate incarcerated pursuant to a conviction will view the duration or conditions of incarceration as dependent on cooperation with the interrogation.

Courts considering whether an in-prison interrogation is custodial should therefore distinguish between restrictions on the inmate that result from ordinary incidents of prison life, and additional restraints imposed in connection with the interrogation. If an inmate has not been subject to restraints beyond those incident to pris-

on life, separation from the general population does not in itself render the interview custodial. This approach is both administrable—the majority of courts of appeals already follow it—and consistent with the Court's focus on whether the circumstances of the interview create the danger of compelled confessions. The court of appeals' approach, in contrast, would hinder law enforcement and prison administration by requiring *Miranda* warnings to be given any time that an inmate is arguably separated from the general population for questioning, regardless of the surrounding circumstances. Such a rule would also provide inmates with greater protections than ordinary citizens.

C. Respondent was not in custody at the time of his interview. All of the restrictions that the court of appeals found to be coercive—the fact that respondent was escorted by corrections officers to the interrogation, the need to summon the guards before respondent could be escorted back to his cell, and the fact that the door leading back to the prison was locked—resulted from ordinary prison procedures to which respondent was already subject as part of prison life. The other circumstances of respondent's interrogation would have led a reasonable person to conclude that he was free to end the questioning. In particular, the questioning officers repeatedly informed respondent that he was free to end the interrogation, the questioning took place in a relatively comfortable setting, and the questioning was conducted in a conversational manner.

ARGUMENT

WHEN A CONVICTED AND INCARCERATED INMATE IS INTERROGATED ABOUT CONDUCT OCCURRING OUTSIDE THE PRISON, SEPARATION FROM THE GENERAL POPULATION DOES NOT BY ITSELF RENDER THE INMATE IN CUSTODY FOR *MIRANDA* PURPOSES

Under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), statements taken in custodial interrogation must be preceded by specified warnings in order to be admissible in the government's case in chief. Specifically, the suspect must "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444; see also *Florida* v. *Powell*, 130 S. Ct. 1195 (2010). If a suspect makes a statement during custodial interrogation, the burden is on the government to show, as a "prerequisite[] to the admissibility of [the] statement," that the defendant "voluntarily, knowingly and intelligently" waived his rights. *Miranda*, 384 U.S. at 444, 475-476.

Those procedures are a prerequisite to admissibility, "however, 'only where there has been such a restriction on a person's freedom as to render him "in custody."'" *Stansbury* v. *California*, 511 U.S. 318, 322 (1994) (per curiam) (quoting *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977) (per curiam)). Whether a person is in custody for purposes of *Miranda* is an objective inquiry that requires determining whether, in light of "all of the circumstances surrounding the interrogation," *ibid.*, a "reasonable person would have felt free to terminate the interview and leave," *Yarborough* v. *Alvarado*, 541 U.S.

652, 665 (2004); *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995).

The Court has described the general custody inquiry as "whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (internal quotation marks and citation omitted). But that is "only a necessary and not a sufficient condition for *Miranda* custody"; even when a suspect's freedom of movement is restrained, the situation is custodial only if the circumstances exert the coercive pressures with which the *Miranda* decision was concerned. *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224 (2010); *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984). When a prison inmate is interviewed and the restrictions to which he is subjected in connection with the interview are consistent with the ordinary restrictions that are incident to incarceration itself, there is no danger that those restraints will coerce the inmate into confessing. The court of appeals therefore erred in formulating a "bright line test" that looks only to whether the prisoner is "isolated from the general prison population." Pet. App. 18a-19a. As this case illustrates, separation from the general prison population does not necessarily entail restrictions above and beyond those incident to normal prison life or mean that a prisoner would not have felt free to terminate the encounter.

A. The *Miranda* Custody Inquiry Is An Objective Test That Focuses On Whether The Restraints On The Suspect's Freedom Of Movement Create The Danger That The Suspect Will Feel Compelled To Incriminate Himself

1. The Fifth Amendment provides that "[n]o person shall * * * be compelled in any criminal case to be a

witness against himself." U.S. Const. Amend. V. Accordingly, involuntary confessions are not admissible against the defendant. *Oregon* v. *Elstad*, 470 U.S. 298, 306-307 (1985). Before *Miranda*, this Court primarily "evaluated the admissibility of a suspect's confession under a voluntariness test" whose "primar[y]" constitutional basis was the Due Process Clause. *Dickerson* v. *United States*, 530 U.S. 428, 433 (2000). Under that test, to determine whether a particular "defendant's will was overborne" during interrogation, *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 226 (1973), a court must engage in "a weighing of the circumstances of pressure against the power of resistance of the person confessing," *Stein* v. *New York*, 346 U.S. 156, 185 (1953), overruled in part on other grounds by *Jackson* v. *Denno*, 378 U.S. 368 (1964).

In *Miranda*, the Court held that the danger that a suspect who is interrogated in police custody will feel compelled to speak warranted "prophylactic measures" to protect the suspect's Fifth Amendment right against compelled self-incrimination. *Shatzer*, 130 S. Ct. at 1219; *Miranda*, 384 U.S. at 467. The Court concluded that "incommunicado interrogation of individuals in a police-dominated atmosphere," *id.* at 445, generates "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely," *id.* at 467; *Illinois* v. *Perkins*, 496 U.S. 292, 296-297 (1990). Accordingly, the Court held that before conducting a custodial interrogation, the police must inform a suspect of specified rights. *Miranda*, 384 U.S. at 467-473, 479.

Miranda identified police custody as the point at which additional protections become appropriate because a suspect in custody may feel "completely at the mercy of the police," giving rise to "pressures that

* * * impair [a suspect's] free exercise of his privilege against self-incrimination." *Berkemer*, 468 U.S. at 437-438. When a suspect is placed in custody, therefore, the *Miranda* warnings become necessary to counter the coercive effects of the police officers' control over the situation. See *Perkins*, 496 U.S. at 297.

Whether a situation rises to the level of custody "depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury*, 511 U.S. at 323; see *Beheler*, 463 U.S. at 1124-1125. In determining whether a suspect is in custody for *Miranda* purposes, the "ultimate inquiry" is whether there has been a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest," an inquiry that depends on (1) "the circumstances surrounding the interrogation" and (2) whether a "reasonable person" in those circumstances would "have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson*, 516 U.S. at 112 (internal quotation marks and citation omitted).

The Court has eschewed per se rules holding that certain situations are always custodial. See, *e.g.*, *Mathiason*, 429 U.S. at 495 (refusing to hold that police-station interviews are always custodial, even though every such interview "will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime"). Rather, in each case the Court has considered the objective circumstances surrounding the questioning, *Beheler*, 463 U.S. at 1125, including factors such as the location of the questioning, the questioners' use of force or restraints, the length of the interview, whether the person is told he

may terminate the interview, and whether the person is permitted to leave afterwards. See, *e.g.*, *Berkemer*, 468 U.S. at 437-438 (considering public setting, length, and presence of only one or two officers in holding traffic-stop questioning noncustodial); *Mathiason*, 429 U.S. at 495 (considering fact that police informed suspect that he was free to leave in holding police-station questioning noncustodial); *Beckwith* v. *United States*, 425 U.S. 341, 342-344 (1976) (considering location at suspect's home in holding questioning noncustodial).

2. In determining whether there has been a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest," *Thompson*, 516 U.S. at 112 (quoting *Beheler*, 463 U.S. at 1125), the Court has emphasized that the restraints in question must create "those types of situations in which the concerns that powered the [*Miranda*] decision are implicated," *Berkemer*, 468 U.S. at 437. It is not enough, therefore, that the suspect's freedom of movement be restricted; rather, those restrictions must convey to the suspect that his detention and treatment turn on his cooperation. See *id.* at 437-438; *Perkins*, 496 U.S. at 296-297. The Court has accordingly twice declined to hold that restraints on a suspect's freedom of movement necessarily create a custodial situation regardless of whether those restraints created coercive pressure to confess.

In *Berkemer*, 468 U.S. at 437-439, the Court rejected the defendant's argument that a traffic stop is necessarily custodial because the motorist is not free to end the encounter until the detaining officer permits him to drive away. The Court emphasized that restraints on freedom of movement do not have "talismanic power," but rather are relevant only to the extent that they "exert[] upon a detained person pressures that sufficiently

impair his free exercise" of his Fifth Amendment privilege. *Id.* at 437. Accordingly, the Court concluded that although a traffic stop "significantly curtails the 'freedom of action of the driver,'" *id.* at 436, the "circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police," *id.* at 438. The public nature of the stop, its brief duration, and the likelihood that only one or two officers are involved "mutes [the driver's] sense of vulnerability" and makes it less likely that the driver will fear "abuse" or continued detention unless he makes incriminating statements. *Ibid.*

Similarly, in *Shatzer*, 130 S. Ct. at 1224, the Court considered "whether incarceration constitutes custody for *Miranda* purposes," and it held that an incarcerated prisoner who has been interrogated is no longer in *Miranda* custody once he is returned to the general prison population. Although the inmate necessarily continued to experience significant restrictions on his liberty as a result of his incarceration, the Court emphasized that the freedom-of-movement test "identifies only a necessary and not a sufficient condition for *Miranda* custody." *Ibid.* The concerns addressed in *Miranda* were not raised by incarceration itself, the Court held, because an inmate would not perceive his continued confinement as related to, or dependent upon, his responses to his previous questioning. *Id.* at 1224-1225. Moreover, the restrictions on the inmate represented the usual limitations attendant to prison life, rather than conditions placed on him by his questioners. *Ibid.* The Court therefore concluded that the restrictions on the inmate's freedom did not exert any coercive pressure to confess and consequently did not create a custodial situation.

B. The Baseline Restraints That Are Incident To Incarceration Do Not Render An Interview That Takes Place Apart From The General Population Custodial For *Miranda* Purposes

The court of appeals held that a prisoner who is isolated from the general population and questioned about conduct occurring outside the prison is always and automatically in custody for *Miranda* purposes. That bright-line rule has no basis in this Court's precedents. Whether an inmate's questioning is custodial turns on the traditional custody analysis—namely, on whether the totality of the circumstances establishes that a reasonable person in the inmate's position would have felt pressure to cooperate with the questioning instead of terminating the interview. See *Thompson*, 516 U.S. at 112. In making that determination, it is necessary "to separate the restrictions on [a suspect's] freedom arising from police interrogation and those incident to his background circumstances." *United States* v. *Jamison*, 509 F.3d 623, 629 (4th Cir. 2007). Restrictions on an inmate's freedom of movement that arise from the ordinary restrictions of incarceration do not create the coercive pressures with which *Miranda* was concerned, and isolation from the general population therefore does not have the talismanic force that the court of appeals attributed to it.

1. This Court has not instituted a per se rule that all questioning of an inmate is custodial

The court of appeals based its bright-line rule on *Mathis* v. *United States*, 391 U.S. 1 (1968), which the court interpreted as holding that "a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated

* * * about conduct occurring outside the prison." Pet. App. 10a. To the contrary, *Mathis* announced no such rule, and this Court's subsequent decisions confirm that the court of appeals' interpretation of *Mathis* is incorrect.

In *Mathis*, an inmate was questioned at a state prison by a federal agent about tax offenses that were unrelated to the conviction for which he was imprisoned. The inmate later sought to suppress his statements on the ground that the agent had not informed him of his *Miranda* rights. *Mathis*, 391 U.S. at 2-3. The Court understood the government to seek "to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation." *Id.* at 4. The Court rejected that proposed per se rule, holding that *Miranda* was not inapplicable simply because "petitioner had not been put in jail by the officers questioning him, but was there for an entirely separate offense." *Ibid.*; see *id.* at 7-8 (White, J., dissenting) (stating that he would have held that "[t]he rationale of *Miranda* has no relevance to inquiries conducted outside the allegedly hostile and forbidding atmosphere surrounding police station interrogation of a criminal suspect").

The Court did hold that Mathis's statements to the agent should have been suppressed, and the necessary premise of that conclusion is that Mathis was in custody for *Miranda* purposes when he was questioned by the agent. See *Mathis*, 391 U.S. at 5. But the *Mathis* Court did not purport to establish a bright-line rule that an inmate is always in *Miranda* custody once he is separated from the general prison population for questioning—and it is highly unlikely that the Court would have announced such a sweeping rule *sub silentio*. Indeed, it

is not even apparent from the *Mathis* decision whether Mathis was in fact isolated from the general population when he was questioned, or whether the Court viewed that circumstance or any other as having legal significance in the custody analysis. See *id.* at 2-3; *United States* v. *Ellison*, 632 F.3d 727, 730 n.1 (1st Cir.) (Souter, J.) (noting the Court did not "say whether the interview with Mathis fell within *Miranda* because of his incarceration or because of some other deprivation that was significant in the circumstances"), cert. denied, 131 S. Ct. 295 (2010). Therefore, *Mathis*'s limited holding rejected the government's proposed per se rule that *Miranda* should not be applicable to an inmate who is incarcerated in connection with a case other than the one under investigation, but the decision did not establish the opposite per se rule that all questioning of an inmate who is separated from the general population *is* custodial interrogation.

This Court's subsequent decisions further underscore that *Mathis* did not impose the bright-line rule espoused by the court of appeals. The Court has stated that it has never addressed—much less established a per se rule governing—the question whether questioning an incarcerated inmate is necessarily custodial for *Miranda* purposes. See *Perkins*, 496 U.S. at 299 ("The bare fact of [prison] custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here."). More generally, since *Mathis*, the Court has refused to institute per se rules that particular situations are custodial based on the existence of a generalized "coercive environment," *Mathiason*, 429 U.S. at 495, or the inability to end an encounter at will, see *Berkemer*, 468 U.S. at 437; pp. 15-16, *supra*. In-

stead, it has held that the *Miranda* custody inquiry focuses on whether, in view of all the circumstances, the restrictions placed on an individual give rise to the danger of coercion addressed in *Miranda*. See pp. 15-16, *supra*. Had *Mathis* held that questioning of inmates is always custodial, regardless of the circumstances surrounding the interrogation, it would stand apart from the Court's other decisions, all of which emphasize the context-specific nature of the custody inquiry.

If there were any remaining doubt about *Mathis*'s reach, *Shatzer* removes it. *Shatzer* held that whether the restraints of prison create a custodial situation "depends upon whether [they] exert[] the coercive pressure that *Miranda* was designed to guard against" and that the "baseline set of restraints" incident to residence in the general prison population does not create the requisite coercive pressures to confess. 130 S. Ct. at 1224-1225. The court of appeals believed that *Shatzer* held that prison interviews that take place away from the general population are always custodial. Pet. App. 14a, 18a. But *Shatzer* did not address that question. As the Court observed, the parties agreed that Shatzer's in-prison interviews had been custodial, see 130 S. Ct. at 1224 ("[n]o one questions that Shatzer was in custody for *Miranda* purposes during the interviews with Detective Blankenship"), and thus the Court had no need to decide under what circumstances a prison interview would be custodial. In all events, although the Court left open that question, its discussion of prison restraints in the context of the general prison population confirms that in analyzing the interaction of baseline prison restraints and police questioning, the key question is whether those restraints by themselves give rise to coercive

pressure to cooperate with the questioning that implicates *Miranda*. See pp. 23-24, *infra*.

2. ***When an inmate isolated for questioning is subjected only to the baseline restrictions that are incident to incarceration, those restraints do not render the interrogation custodial***

Whether an inmate is in custody for *Miranda* purposes when he is questioned away from the general prison population thus turns on the traditional custody inquiry: whether the objective circumstances of the interview create the danger of compelled confessions that the *Miranda* warnings are designed to address. See *Thompson*, 516 U.S. at 112; see also *Shatzer*, 130 S. Ct. at 1224; *Berkemer*, 468 U.S. at 437. In applying the custody analysis in the prison context, *Shatzer* established that an inmate returned to the general population after questioning is not in custody because the ordinary restrictions incident to incarceration are an expected part of the inmate's daily life that are unlikely to coerce him into confessing. 130 S. Ct. at 1224. For many of the same reasons, when an inmate is questioned away from the general population, background prison restrictions that come into play during the interview cannot convert a "noncustodial situation * * * to one in which *Miranda* applies." *Mathiason*, 429 U.S. at 495.

As the Court has observed, "all forms of incarceration" impose severe restrictions on a prisoner's freedom of movement. *Shatzer*, 130 S. Ct. at 1224. Restraints incident to incarceration may affect the circumstances surrounding an inmate's interview with law enforcement officers in a number of ways. For instance, the prison's ordinary procedures may require that a prisoner be escorted to and from the interview or require that certain

security measures be taken during the interview. Although these restrictions may leave the inmate with less freedom of movement than he would have if the interview took place outside of prison, when the restrictions that an inmate experiences during an interview arise as a result of incarceration rather than as a result of the process of interrogation, they do not give rise to the coercive pressures addressed in *Miranda*. That is so for several reasons.

First, because inmates expect to be subject to the background restraints of incarceration, applying those restrictions in an interview setting does not subject the inmate to the type of unfamiliar restraints that can create to coercive pressures. See *Miranda*, 384 U.S. at 457, 461. Restrictions on movement are part of an inmate's "daily routine," and an inmate ordinarily does not expect to have complete control over his movements within the prison or freedom from the security measures designed to ensure that inmates do not engage in illicit conduct or attempt to escape. See *Shatzer*, 130 S. Ct. at 1224. When an inmate is escorted to or from an interview by corrections officers, or subjected to ordinary prison security measures during the interview, then, he is experiencing the usual "degree of control" over his movements that he expects as a prisoner. *Ibid.*; see, *e.g.*, *United States* v. *Conley*, 779 F.2d 970, 973-974 (4th Cir. 1985) (fact that inmate interviewed in infirmary was in handcuffs and restraints during interview did not render interview custodial, because prison procedures called for such restraints during stays in the infirmary), cert. denied, 479 U.S. 830 (1986). Knowing what to expect, the inmate is not "thrust into an unfamiliar atmosphere" by the prison restraints. *Miranda*, 384 U.S. at 457.

Second, ordinary prison restraints do not create the impression that the inmate is at the mercy of the questioning officers, or that his treatment at the hands of the questioners depends on whether he cooperates with the interrogation. See *Perkins*, 496 U.S. at 296-297 (fear of reprisal for silence, or hope of more lenient treatment in return for confessing, are key components of coercion). Such restrictions are part and parcel of ordinary prison life, rather than restraints that are imposed by the questioning officers as an incident to interrogation.

Even when a prisoner is removed from his usual surroundings for questioning, the duration of the prisoner's questioning is not necessarily wholly "dependent on his interrogators," *Shatzer*, 130 S. Ct. at 1225 n.8, in the sense that triggers *Miranda*. It is true that prison restrictions may limit the inmate's ability simply to walk out of the interview of his own accord, and it may be necessary for the questioning officers to set in motion the process of having the inmate escorted back to the general population. But that is a function of being a prisoner. It does not signal that the prisoner is subject to incommunicado interrogation that he is powerless to end. Cf. Pet. App. 30a (McKeague, J., concurring) (emphasizing that "the state court rightly noted that the fact that [respondent] was told he could leave at any time is of critical significance"). Although the court of appeals believed that "[t]he sense of control exercised by interrogators over the prisoner in determining the length of the prisoner's removal from his normal life" establishes that questioning away from the general population is always custodial, *id.* at 19a, official questioners can communicate to the inmate, through words or through the surrounding circumstances, that he is at liberty to decline to cooperate and may return to his cell

or other activities if he wishes. The inmate's inability to walk back to his cell unescorted does not, without more, render him "completely at the mercy of the police." *Berkemer*, 468 U.S. at 438. The restriction's source in ordinary prison procedures, rather than the officer's control of the interrogation, "substantially offset[s]" any coercive effect. *Id.* at 438-439; see, *e.g.*, *Ellison*, 632 F.3d at 730 (finding interview non-custodial in part because inmate was free to summon the guards and ask them to escort him back to his cell).

Third, incarceration pursuant to a conviction does not render questioning custodial because the inmate ordinarily should have little concern that the duration of incarceration or the conditions of confinement are dependent on cooperation with the interrogation. Because the interrogator has no apparent "power to increase the duration of incarceration, which was determined at sentencing" or to "decrease the time served," the inmate's continued detention does not appear to "rest[] with those controlling [the] interrogation," and thus there is no danger that the inmate will feel compelled to cooperate by the prospect of leniency or the threat of continued detention.[1] *Shatzer*, 130 S. Ct. at 1224-1225. Of course, if the questioning officers credibly threaten an inmate with more severe conditions of confinement than normally imposed, or if prison procedures penalize inmates for refusing to cooperate with questioning, then the prospect of those additional restraints that are directed to the inmate's response to interrogation might create

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[1] In that sense, an inmate incarcerated pursuant to a conviction is differently situated from someone held in jail on pending charges. The latter individual can easily imagine that his continued incarceration, and what charges he faces, may be affected by whether he cooperates with authorities. See *Shatzer*, 130 S. Ct. at 1225.

coercive pressures that would be relevant to the custody analysis. Cf. *Georgison* v. *Donelli*, 588 F.3d 145, 149 (2d Cir. 2009) (noting the absence of prison rule imposing penalties for failing to cooperate as evidence that inmate was not subjected to any restraints beyond those arising from ordinary confinement). Absent specific circumstances linking the inmate's prison treatment with his cooperation with the interrogation, however, an inmate will have no reason to think that his cooperation will have any effect on his incarceration.

In sum, in making the *Miranda* custody assessment, it is necessary to distinguish between the restrictions that are imposed in connection with police interrogation and those that are "incident to [the prisoner's] background circumstances." *Jamison*, 509 F.3d at 629. If the inmate was not subjected to any restrictions different from the restraints incident to incarceration—such as prison rules governing inmate movement and security—the restraints could not have contributed to any sense of coercion within the interrogation and therefore do not render the interview custodial. Accordingly, separating an inmate from the general prison population for questioning does not automatically implicate a requirement to give *Miranda* warnings.

3. The Sixth Circuit's rule would have detrimental consequences

The court of appeals' bright-line rule that prisoners isolated for questioning about conduct outside the prison are always in custody for *Miranda* purposes would have a number of adverse consequences. The rule would place prisoners in a more favorable position than ordinary citizens, as it would entitle them to *Miranda* warnings before every instance of questioning, regardless of

the surrounding circumstances. See *Cervantes* v. *Walker*, 589 F.2d 424, 427 (9th Cir. 1978) ("Adoption of [the Sixth Circuit's rule] would not only be inconsistent with *Miranda* but would torture it to the illogical position of providing greater protection to a prisoner than to his nonimprisoned counterpart."). The court's rule could also disrupt prison administration by requiring *Miranda* warnings any time that an inmate is arguably separated from the general population for questioning about conduct outside the prison, even when corrections officers have private but informal conversations with inmates or an inmate voluntarily seeks out a corrections official. See *Conley*, 779 F.2d at 973. In addition, although the court limited its rule to questioning about conduct occurring outside the prison, see Pet. App. 19a, the court's logic would seem to extend to questioning about events inside the prison when the inmate is separated from the general population for questioning.

The court of appeals claimed that a virtue of its bright-line rule governing questioning of prisoners isolated from the general population is its ease of application. See Pet. App. 20a. But the costs of a rule that applies *Miranda* to the type of questioning that does not implicate its concerns cannot be justified solely by administrative convenience. In *Berkemer*, for example, the Court recognized that its rejection of a per se rule requiring *Miranda* warnings in all traffic stops "will mean that the police and lower courts will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody," but a per se rule "has drawbacks that make it unacceptable," including "impeding] the enforcement of the Nation's traffic laws." 468 U.S. at 441; cf. *McNeil* v. *Wisconsin*, 501 U.S. 171, 182 (1991) (preference for "clear and unequivocal" rules

is warranted "only when they guide sensibly and in a direction we are authorized to go"). Here, the Sixth Circuit's rule would frustrate the investigation of criminal activity through non-coercive questioning, even when officers assure the suspect of his freedom to end the questioning subject only to normal conditions of prison life. Cf. Pet. App. 13a (discounting the officer's informing respondent that he could end the interview at any time because doing so would require the assistance of a corrections officer).

By contrast, a rule holding that baseline restrictions incident to imprisonment do not render an interview custodial is workable and consistent with the context-specific nature of the custody inquiry. Aside from the Sixth Circuit, the courts of appeals to have addressed the issue—as well as many state courts—already follow this approach, and they have been able to distinguish between ordinary background restrictions incident to incarceration and additional restrictions imposed for the purpose of the interrogation itself. See, *e.g.*, *Conley*, 779 F.2d at 973-974; see also, *e.g.*, *Commonwealth* v. *Smith*, 924 N.E.2d 270, 275-276 (Mass. 2010) (finding interview noncustodial because the use of handcuffs and the presence of a guard during the interview arose from customary prisoner-movement procedures; the fact that the inmate was not told that he was free to end the interview was not dispositive in light of the non-intimidating setting and cordial questioning); *People* v. *Patterson*, 588 N.E.2d 1175, 1180 (Ill.), cert. denied, 506 U.S. 838 (1992). When the ordinary restrictions incident to confinement are altered in connection with the interview in question, any additional restrictions may be considered in determining whether the interview is custodial for *Miranda* purposes. See *Berkemer*, 468 U.S. at 440 (re-

strictions ordinarily incident to a traffic stop do not create a custodial situation, but "[i]f a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*"). This view thus does not place the prisoner in any worse position than a non-imprisoned citizen: depending on the circumstances created in connection with the interrogation itself, some inmates will be in custody for *Miranda* purposes, and others will not.[2] See *id.* at 437-439.

C. Respondent Was Not In Custody For *Miranda* Purposes When He Was Interrogated

For the reasons stated above, the court of appeals erred in concluding that purely "[b]ecause [respondent] was removed from the general prison population for interrogation about an offense unrelated to the one for which he was incarcerated," Pet. App. 13a, he was necessarily in custody for *Miranda* purposes. An analysis of the objective circumstances surrounding respondent's interrogation, keeping in mind that the restrictions on respondent's freedom of movement were simply incident to his incarceration, demonstrates that respondent was not in custody when he was interrogated.

Respondent's interrogation occurred during his incarceration for a disorderly conduct conviction, and he

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[2] Moreover, because the Court has "never abandoned [its] due process jurisprudence, and thus continue[s] to exclude confessions that were obtained involuntarily," *Dickerson*, 530 U.S. at 434, an inmate is always free to argue that aspects of his ordinary conditions of confinement created psychological effects that rendered his confession involuntary, irrespective of whether he was in custody when the statements were made.

had no reason to think that his cooperation would have any impact on the length or conditions of his confinement. The questioning took place in a "conference room" that was located outside of the jail, in the adjoining sheriff's department, and that was large enough to hold a conference table, chairs, and a desk. The conference room door was open during parts of the interview. Pet. App. 70a-72a, 88a-89a, 122a-123a. Respondent was escorted from his cell to the conference room by corrections officers through a locked door between the jail and the sheriff's department. *Id.* at 72a, 77a-78a. The interviewing officers informed him that he was free to end the interview whenever he wanted, and they reminded him of that fact later in the interview. *Id.* at 89a, 124a-126a; see *id.* at 55a ("Deputy Batterson told [respondent] he was free to leave the conference room and return to his jail cell."). Respondent acknowledged that he was never threatened with any consequences if he refused to cooperate; he was not physically restrained or touched by the officers; and he was offered water during the interview. *Id.* at 97a-98a. Respondent also testified that the interview was conducted in a conversational manner and that the officers answered the questions that respondent posed to them. *Id.* at 99a. Although respondent asserted that one of the officers raised his voice and used profanity in telling respondent to sit down, respondent stated that the officer followed up by telling him that "if I didn't want to cooperate, I could leave." *Id.* at 89a. After five to seven hours of questioning, respondent indicated that he wished to return to his cell, and corrections officers arrived in 20 minutes to escort him back to his cell. *Id.* at 89a, 123a-124a, 130a; see *id.* at 56a.

In concluding that these circumstances "unquestionably" were custodial, the court of appeals erroneously emphasized that respondent was "taken from his prison cell to a conference room without explanation," that the conference room was locked, and that "exiting the conference room was a lengthy process that required a corrections officer to be summoned." Pet. App. 13a. None of these restrictions went beyond the ordinary restraints incident to respondent's incarceration. Respondent acknowledged that he was not ever permitted to "roam around" the jail unescorted and that as a matter of experience and "common sense," he expected that returning to his cell would involve being escorted, either by the police officers or the jail guards. *Id.* at 91a-92a. Although respondent testified that the door separating the jail from the sheriff's department was locked, so that he could not have re-entered the jail on his own, *id.* at 72a; that fact is attributable to ordinary prison security procedures.[3] Moreover, although respondent had to wait 20 minutes for the guards to arrive to escort him back to his cell, he has not asserted that the wait resulted from anything other than the normal procedures for summoning the guards, and thus the wait did not render the interview custodial.[4] In sum, the restraints

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[3] Although the court of appeals asserted that the conference room door was locked, Pet. App. 13a, respondent actually testified that the conference room door was in fact ajar for parts of the interview, *id.* at 70a, and the state courts did not make any findings on the issue. Only the door permitting entry into and exit from the jail was locked. See *id.* at 72a.

[4] Respondent testified that the officers continued to question him during the 20-minute wait even though he told the officers that he did not want to talk to them anymore. See Pet. App. 93a. But even during that brief interval of time, respondent knew that he was free to term-

on respondent's freedom of movement on which the court of appeals focused were simply the ordinary incidents of incarceration, and thus they did not render the interview custodial for *Miranda* purposes.

Nor did any of the other circumstances of the interview create the sort of "police-dominated" atmosphere with which *Miranda* is concerned. Respondent was informed repeatedly that he was free to discontinue the interview, and although it lasted several hours, respondent had the option of terminating it sooner. See *Mathiason*, 429 U.S. at 495; see also, *e.g.*, *United States* v. *King*, 604 F.3d 125, 138-139 (3d Cir. 2010) (several-hour duration of questioning was offset by FBI agents' informing suspect that he was free to terminate the interview), cert. denied, 131 S. Ct. 1467 (2011); *Mason* v. *Mitchell*, 320 F.3d 604, 631-632 (6th Cir. 2003) (same). The conference room in which the interview occurred was not claustrophobic, Pet. App. 88a, and it was designed for internal police department, rather than prison, use. Cf. *Ellison*, 632 F.3d at 730 (interview in prison library took place in a relatively comfortable setting). Although the questioning officers were armed, Pet. App. 74a, police officers are often armed when they question suspects—including at traffic stops, which the Court has held do not generally create the coercive pres-

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inate the encounter. And, in any event, respondent has not asserted that his confession occurred during that period. See Br. in Opp. 6; Pet. App. 124a-125a.

sures incident to custody.[5] See *Berkemer*, 468 U.S. at 437-439; *Mathiason*, 429 U.S. at 495.

In sum, respondent's statements were made during a noncustodial interrogation, and *Miranda* warnings were not required. The Michigan trial court therefore properly admitted respondent's statements at trial.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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[5] Respondent also argues that the interview setting was coercive because the interview continued through the time at which his medications were ordinarily dispensed. Br. in Opp. 14-15. There is no indication in the record, however, that the officers were aware that respondent needed to take his medications and refused to let him do so. Respondent's subjective, uncommunicated concern is therefore not relevant to the custody analysis. See *Beheler*, 463 U.S. at 1124-1125 & n.3; see also *Minnesota* v. *Murphy*, 465 U.S. 420, 433 (1984) (concern that probation might be revoked was not sufficient to render individual in custody).

AMICUS CURIAE BRIEF

RECORD
AND
BRIEFS

FILED
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No. 10-680

In the Supreme Court of the United States

CAROL HOWES,

Petitioner,

v.

RANDALL FIELDS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICI CURIAE OF OHIO, ALABAMA, ALASKA, ARIZONA, ARKANSAS, COLORADO, DELAWARE, FLORIDA, GUAM, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW MEXICO, NORTH DAKOTA, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WISCONSIN, AND WYOMING IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether this Court's clearly established precedent under 28 U.S.C. § 2254 holds that a prisoner is always "in custody" for purposes of *Miranda* any time that prisoner is isolated from the general prison population and questioned about conduct occurring outside the prison regardless of the surrounding circumstances.

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STATEMENT OF AMICI INTEREST

The amici States bear primary responsibility for criminal investigations in this country and therefore have a special interest in *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The States accept the decision's original design: *Miranda* warnings must be issued in any situation where the questioner "exerts upon [the] detained person pressures that sufficiently impair his exercise of his privilege against self-incrimination." *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). But the States oppose any expansion of the *Miranda* doctrine beyond that context, especially in the prison setting.

For this reason, the States urge the Court to reject the Sixth Circuit's definition of the *Miranda* custody rule for prison questioning. The court's framework has no foundation in precedent; it creates artificial and unworkable distinctions in *Miranda* jurisprudence; and it affords greater rights to prisoners than to other citizens.

SUMMARY OF ARGUMENT

All parties agree on the broad contours of *Miranda*: A suspect "taken into custody or otherwise deprived of his freedom of action in any significant way" must receive warnings before he is questioned. 384 U.S. at 444. The dispute here turns on the rule's adaptation to the prison environment. Incarceration, by definition, is custodial in a certain sense. That does not, however, resolve the question of "*Miranda* custody."

The majority view, held by five circuits, is that an inmate is "in custody" (and entitled to *Miranda* warnings) only when the questioner applies additional restraints or coercive pressures beyond

those inherent in everyday prison life. The Sixth Circuit, by contrast, uses a categorical rule: An inmate is "in custody" and entitled to warnings whenever he is questioned away from the general prison population.

The Sixth Circuit's test is flawed for three reasons. First, it mistakenly rests on this Court's decisions in *Mathis v. United States*, 391 U.S. 1 (1968), and *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010). But neither case addressed the concept of "*Miranda* custody" in the prison setting.

Second, the test dramatically expands the *Miranda* protections available to prisoners. For the incarcerated population, "custody" no longer turns on well-worn factors applicable to average citizens, like whether the police applied handcuffs, informed the suspect that he could end the interview, or threatened criminal prosecution.

Third, the Sixth Circuit's rigid focus on only the location of the interview perverts the *Miranda* inquiry. It contradicts this Court's directive to "examine all of the circumstances surrounding the interrogation," *Stansbury v. California*, 511 U.S. 318, 322 (1994), and tethers the definition of "custody" to one (often inconsequential) fact.

At least five other circuits would have examined the totality of circumstances surrounding Fields's interview and concluded that he was not "in custody." The Court should endorse that approach as a proper statement of *Miranda* jurisprudence and reverse the Sixth Circuit's judgment below.

ARGUMENT

A. The Court has never defined "*Miranda* custody" in the prison setting.

Under *Miranda*, a suspect must be advised of his right to remain silent and his right to an attorney whenever he "is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and . . . subjected to questioning." 384 U.S. at 478. This requirement is triggered only when both conditions—"custody" and "interrogation"—exist simultaneously. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980).

In most instances, the definition of "custody" is straightforward. To "determin[e] . . . whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (citation omitted). If "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave," the suspect is in custody and *Miranda* warnings must be issued before any interrogation. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

The "in custody" rubric, however, does not readily translate to prisons, because the bare fact of incarceration means that an inmate's "freedom of movement" is always restrained in a certain sense. But this type of custody, which is "lawful[ly] imposed upon [the inmate's] conviction of a crime," "does not create the coercive pressures identified in *Miranda*." *Shatzer*, 130 S. Ct. at 1224.

The ultimate question then is how to identify "*Miranda* custody" in the specialized setting of a prison. Faced with this issue, lower courts have articulated alternative frameworks for evaluating "*Miranda* custody" in the prison environment.

For its part, the Sixth Circuit "formalize[d] a bright line test" after examining this Court's decisions in ***Mathis*** and ***Shatzer***. Pet. App. 18a The court announced that "[a] ***Miranda*** warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Pet. App. 19a

The Sixth Circuit's reading of both cases is flawed.

1. The *Mathis* decision did not address the custody issue.

In *Mathis*, an IRS agent failed to give *Miranda* warnings to a state prisoner before questioning him about his tax returns. 391 U.S. at 2-3. The prisoner sought to suppress his statements in a later prosecution. The federal government claimed that no violation occurred because the prisoner "had not been put in jail by the officers questioning him, but was there for an entirely separate offense." *Id.* at 4. This Court rejected that distinction: "[N]othing in the *Miranda* opinion . . . calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Id.* at 4-5.

The *Mathis* Court, however, did nothing more than that. It undertook no analysis of *Miranda*'s custody prong. Such an "unexplained silence[] . . . "lack[s] precedential weight." *Plaut v. Spendthrift*

Farm, Inc., 514 U.S. 211, 232 n.6 (1995); accord *Hagans v. Lavine*, 415 U.S. 528, 533 n.5 (1974) ("[W]hen questions . . . have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the . . . issue before us.").

The Sixth Circuit nevertheless extrapolated a broad definition of "custody" from *Mathis*'s terse opinion: An inmate is in *Miranda* custody whenever he is "remove[d] from the general prison population and interrogate[d] . . . regarding criminal conduct." Pet. App. 13a.

That interpretation of *Mathis* is implausible for three reasons. First, this Court had not formulated a clear definition of *Miranda* custody as of 1968.[1] Its first attempt to do so occurred nearly a decade later. In *Oregon v. Mathiason*, 429 U.S. 492, 49[5] (1977) (per curiam), the Court suggested that "custody" requires a "formal arrest or restraint on freedom of movement." It eventually ensconced that formulation as "the ultimate inquiry" for "determin[ing] . . . whether a suspect is 'in custody,'" first in *Beheler*, 463 U.S. at 1125, and later in *Thomson*, 516 U.S. at 112. These three cases make no mention of *Mathis* when discussing the concept of *Miranda* custody, confirming that *Mathis* never grappled with the issue.

Second, the federal government conceded that the *Mathis* prisoner was in custody. The government instead argued that his custody was irrelevant under *Miranda* because it was not "connect[ed] with the

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[1] In *Miranda*, no one disputed the suspect's custodial status. Police had formally arrested him. See 384 U.S. at 491.

very case under investigation" by the IRS agent. *Mathis*, 391 U.S. at 4. Although the Court rejected this proposed exception to the *Miranda* custody requirement, *id.*, it did not otherwise elaborate on the contours of custody in the prison context. And given the federal government's concession, the Court had no need to embark on such an endeavor. Cf. *United States v. Raines*, 362 U.S. 17, 21 (1960) (recognizing the Court's practice "never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied") (citation omitted). In other words, the *Mathis* decision was one of negation: The Court rejected the federal government's argument, but did nothing more.

Third, the record in *Mathis* contains no indication that the prisoner was ever isolated from the general population. The trial transcript reveals only that the IRS agent interviewed the defendant at a state prison. See Joint Appendix at 30-31, *Mathis v. United States*, 391 U.S. 1 (1968) (No. 726) (Testimony of J. Lawless). The parties failed to present any evidence or testimony about the interview's location (a cellblock, a visitor's room, or a common area), the defendant's condition (was he handcuffed or physically confined), or his status (was he removed from the general population).

The Sixth Circuit's reading of *Mathis* is therefore inconsistent with the factual record. Because the *Mathis* Court had no knowledge of the prisoner's status or location, it had no occasion (or even ability) to explore the custody component of *Miranda*, much less define it as "isolat[ion] from the general prison population." Pet. App. 10a.

Simply put, the Sixth Circuit over-interpreted *Mathis*. The *Mathis* Court clearly understood the defendant to be in *Miranda* custody, but only because the federal government did not assert otherwise. Given the thin record and the undeveloped status of *Miranda* jurisprudence at the time, nothing more can be gleaned from the *Mathis* opinion.

2. The *Shatzer* decision did not define *Miranda* custody in the prison setting.

The Sixth Circuit's categorical rule finds no support in *Shatzer* either. In that case, a detective interviewed an incarcerated suspect about child-sex-abuse allegations. The suspect invoked his right to an attorney and the detective terminated the encounter. More than two years later, a second detective re-interviewed the suspect. After waiving his *Miranda* rights, the suspect made incriminating statements. See *Shatzer*, 130 S. Ct. at 1217-18.

The prosecutor then filed criminal charges, and the suspect asserted a violation of *Edwards v. Arizona*, 451 U.S. 477 (1981), which bars police from reinitiating contact after an individual invokes his right to counsel. The Court rejected the defendant's *Edwards* claim, holding that the break in custody vitiated the *Edwards* prohibition. *Id.* at 1222.

To even invoke *Edwards*, however, the *Shatzer* suspect had to be "in[] custody" during the two interviews. *Id.* at 1220. The Court assumed that he was, but not through any independent analysis. Rather, it observed, "[n]o one question[ed] that

Shatzer was in custody for *Miranda* purposes during the [two] interviews."[2] *Id.* at 1224.

The Sixth Circuit seized on that comment: "The Supreme Court's unambiguous conclusion that the *Shatzer* defendant was in *Miranda* custody on both occasions serves to bolster our determination." Pet. App. 18a. The Sixth Circuit assumed that the *Shatzer* Court "expressed no doubt" that a prisoner is in *Miranda* custody whenever he is "taken from his cell to an isolated area . . . for the purpose of interrogation." *Id.*

In so concluding, the Sixth Circuit attached undue significance to a single sentence in the *Shatzer* decision. As Judge McKeague observed below, "the fact that no one questioned whether Shatzer was in custody[] does not mean (or clearly establish) that anytime an inmate is removed from the general prison population and interrogated he is 'in custody' for *Miranda* purposes." Pet. App. 24a (McKeague, J., concurring). Instead, it means only that this Court granted certiorari to decide a particular legal issue—whether a "break in custody" extinguishes a suspect's earlier *Edwards* invocation. Although the parties and the Court "assum[ed] without deciding the validity of [an] antecedent proposition[]"—that Shatzer was in *Miranda* custody during the two interviews—that "assumption[] . . . [is] not binding in future cases." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 272 (1990).

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[2] In *Shatzer*, the Court also made clear that it "ha[d] never decided whether incarceration constitutes custody for *Miranda* purposes, and ha[d] indeed explicitly declined to address the issue." 130 S. Ct. at 1224.

Furthermore, the Sixth Circuit ignored other portions of the *Shatzer* decision. In a footnote, the Court coined the term "interrogative custody" to describe a scenario where a prisoner's questioning "is assuredly dependent upon his interrogators"—meaning, the suspect cannot terminate the interview at his own volition. 130 S. Ct. at 1225 n.8. This footnote, which comes closest to offering an authoritative definition of *Miranda* custody in the prison setting, substantiates the State of Michigan's position here. Detectives informed Fields that he was free to end the interview and return to his cell, see Pet. App. 70a-71a, 89a-90a, 124a-125a, 135a, and Fields understood that option, see Pet. App. 92a-93a. Because the duration of Fields's interview was not dependent on his interrogators, he was not in custody.

Finally, *Shatzer* made clear that "restraint on freedom of movement" is "only a necessary and not a sufficient condition for *Miranda* custody." 130 S. Ct. 1224. The detention must also "create the coercive pressures identified in *Miranda*," *id.*—namely, "pressures that sufficiently impair [a suspect's] free exercise of his privilege against self-incrimination." *Berkemer*, 468 U.S. at 437.

The Sixth Circuit cited no evidence that an inmate's isolation from the general population, in and of itself, exerts such pressures. After all, prison officials segregate inmates for all sorts of reasons—emergencies, medical needs, security, administrative necessities, and the like. Periodic removal from the general population is a fact of life for most inmates

and, therefore, does not itself generate the same type of coercive pressures at issue in *Miranda*.[3]

Justice Souter, sitting by designation on the First Circuit, recently recognized this principle of *Shatzer*. He concluded that a prisoner is not in *Miranda* custody "so long as he is not threatened with harsher confinement than normal until he talks, he knows that the worst that can happen to him will be his return to prison routine, and that he will be back on the street (in most cases) whether he answers questions or refuses." *United States v. Ellison*, 632 F.3d 727, 729 (1st Cir. 2010). Thus, the First Circuit held that the *Ellison* defendant, although interrogated by a police detective in isolation, was not in custody; he "was not restrained," he understood "that he did not have to answer any questions," and "he could go from the library at any time." *Id.* at 730.

The same holds true here. Detectives interviewed Fields in a conference room, they did not restrain him, and they informed him that he could terminate the interview and return to the cellblock. Although Fields was isolated from the general population, "nothing in th[at] fact . . . would be likely to create the atmosphere of coercion subject to *Miranda* concern." *Id.*

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[3] Isolation from the general population may even *lessen* the coercive pressures on the inmate. If officials instead conduct their questioning within plain view of the general population, other prisoners may finger the inmate as a jailhouse informant. Perceiving a possible threat to his safety, the inmate may feel dependent on officials for protection and, thus, more compelled to answer questions.

At bottom, *Mathis* and *Shatzer* "explicitly declined to address the issue of" whether the questioning of an "incarcerat[ed] [suspect] constitutes custody for *Miranda* purposes." *Shatzer*, 130 S. Ct. 1224. Accordingly, the Sixth Circuit's reliance on those cases is misplaced and that court's categorical test for *Miranda* custody is its own novel invention.

B. The Sixth Circuit's bright-line custody test is misguided.

The unsettled nature of the law resolves this case. Because the Court has never "clarif[ied] what constitutes 'custody' for *Miranda* purposes in the prison setting," *Bradley v. Ohio*, 497 U.S. 1011, 1015 (1990) (Marshall, J., dissenting), it cannot be said that the Michigan state court's decision was "contrary to" or "an unreasonable application of" clearly established federal law, 28 U.S.C. § 2254(d)(1); see also *Carey v. Musladin*, 549 U.S. 70, 77 (2006).

But in announcing a new test for *Miranda* custody, the Sixth Circuit not only exceeded its limited habeas authority, it also created an impractical and incoherent rule for lower courts to apply.

1. The Sixth Circuit's test affords greater protections to prisoners than other citizens.

The Sixth Circuit's custody test affords prisoners significantly more *Miranda* protection than ordinary citizens.

The Sixth Circuit emphasized that its "bright line approach" obviates the need for "fact-specific inquiries by lower courts into the precise circumstances of prison interrogations." Pet. App. 20a. Of particular note, whether or not the prisoner was "told he could stop the interrogation" is irrelevant to the court's analysis. Pet. App. 18a.

The *Miranda* inquiry differs significantly for non-imprisoned individuals. That "a person is told repeatedly that he is free to terminate an interview is powerful evidence that a reasonable person would have understood that he was free to terminate the interview." *United States v. Czichray*, 378 F.3d 822, 826 (8th Cir. 2004). Advising the suspect "that [he] may terminate the interview at will" is therefore "the most obvious and effective means of demonstrating that a suspect has not been taken into custody" under *Miranda*. *Id.* (citation omitted)). If police advise a suspect that he is free to terminate the interview, the circuit courts "generally . . . conclu[de] that the defendant is *not* in custody." *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006); accord *United States v. Hargrove*, 625 F.3d 170, 180 (4th Cir. 2010); *Locke v. Cattell*, 476 F.3d 46, 53-54 (1st Cir. 2007); *United States v. Collins*, 972 F.2d 1385, 1405 (5th Cir. 1992).

This Court has never suggested that *Miranda* erects a larger shield for prisoners. Yet the Sixth Circuit's custody rule here does just that. Officers informed Fields that he was free to terminate the interview. See Pet. App. 70a-71a, 89a-90a, 124a-125a, 135a. Had the questioning occurred at a stationhouse, these advisements would be an "important factor" in the Sixth Circuit's custody

inquiry. *United States v. Salvo*, 133 F.3d 943, 951 (6th Cir. 1998). But because Fields was incarcerated, the advisements had no bearing on the court's analysis.[4] Pet. App. 18a.

2. The Sixth Circuit's test artificially distinguishes between prison conduct and outside conduct.

The Sixth Circuit's custody test is anomalous in a second respect: The court constrained its bright-line custody rule only to "interrogat[ions] about conduct occurring *outside of the prison*." Pet. App. 19a. (emphasis added). It did so for a reason—to avoid conflict with other circuit decisions applying *Miranda* to prison misconduct investigations. At its core, however, the Sixth Circuit's inside-outside distinction is artificial and illusory.

After *Mathis*, many lower courts concluded that a prisoner is not automatically "in custody" when interrogated about conduct occurring inside the prison. The Ninth Circuit led the way. In *Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978), a guard questioned a prisoner in a small library area about a suspicious matchbook. *Id.* at 427. The prisoner confessed that it contained marijuana. At trial, however, he argued that he was entitled to *Miranda* warnings because his inability to "leave the

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[4] Officers also did not handcuff or restrain Fields at the interview. See Pet. App. 71a. In assessing custody under *Miranda*, courts generally consider whether the suspect was handcuffed. See, e.g., *New York v. Quarles*, 467 U.S. 649, 655 (1984). The Sixth Circuit, however, deems that fact irrelevant if the suspect is incarcerated. Pet. App. 18a.

prison freely" meant that he was "in custody." *Id.* at 428.

The Ninth Circuit rejected the claim: "When prison questioning is at issue . . . th[e] 'free to leave' standard ceases to be a useful tool in determining the necessity of *Miranda* warnings." *Id.* The court adopted an alternative formulation: *Miranda* custody in prison occurs only when "a change in the surroundings of the prisoner . . . results in an added imposition on his freedom of movement." *Id.* This inquiry turns on "the language used to summon the individual, the physical surroundings of the interrogation, the extent to which he is confronted with evidence of his guilt, and the additional pressure exerted to detain him." *Id.*

Other circuits endorsed the *Cervantes* approach. See, e.g., *Garcia v. Singletary*, 13 F.3d 1487, 1492 (11th Cir. 1994); *United States v. Conley*, 779 F.2d 970, 973 (4th Cir. 1985); *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984). And they did so not just for "on-the-scene" inquiries, but for all questioning about prison misconduct. In *United States v. Cooper*, 800 F.2d 412, 415 (4th Cir. 1986), for instance, the Fourth Circuit employed the *Cervantes* factors to determine whether an inmate was "in custody" when a correctional officer questioned him about a ten-day-old stabbing incident. Likewise, in *United States v. Chamberlain*, 163 F.3d 499, 502-03 (8th Cir. 1998), the Eighth Circuit performed a totality inquiry to assess whether a prisoner was "in custody" when investigators confronted him about child pornography stored on his prison work computer.

The Sixth Circuit took no issue with those decisions. Nor could it. The court had previously endorsed the *Cervantes* inquiry, albeit in dicta, to assess *Miranda* custody. See *United States v. Ozuna*, 170 F.3d 654, 658 n.3 (6th Cir. 1999); *United States v. Cofield*, No. 91-5957, 1992 U.S. App. Lexis 8284, at *6-7 (6th Cir. Apr. 17, 1992); accord *Simpson v. Jackson* 615 F.3d 421, 440 n.7 (6th Cir. 2010) ("We noted the *Cervantes* reasoning with approval in dicta.").

Instead, the Sixth Circuit endorsed two different tests: When assessing *Miranda* custody, courts in the circuit are free to employ a *Cervantes* totality-of-the-circumstances inquiry when authorities question an inmate about "an offense committed in the jail itself." Pet. App. 12a. But they must use the categorical custody test when the interview implicates "conduct that took place outside the jail or prison." Pet. App. 13a.

The Sixth Circuit's attempt to straddle the fence (and avoid the prospect of encumbering prison administrators with the full panoply of *Miranda* responsibilities) is incoherent and unpersuasive. The geographic focus of the interview—whether the questions address conduct that is internal or external to the prison—has no logical correlation to whether the prisoner would "fe[el] . . . at liberty to terminate the interrogation." *Thompson*, 516 U.S. at 112. Either the Sixth Circuit's bright-line test for *Miranda* custody applies in all instances, or it applies in none.[5]

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[5] In *Simpson*, the Sixth Circuit posited an equally unpersuasive distinction—that the prisoner was in *Miranda* custody because

In short, two dubious premises underlie the Sixth Circuit's bright-line test—that *Miranda*'s protections expand when the interviewee is a prisoner (as opposed to an ordinary citizen), and when the interview implicates conduct occurring outside (as opposed to inside) the prison. This Court's precedents support neither distinction.

C. *Miranda* custody in the prison setting is properly determined through a totality-of-the-circumstances inquiry.

Five other circuits examine the "totality of the circumstances" to determine whether a prisoner is in custody during questioning. This inquiry best reflects *Miranda*, its progeny, and its objectives.

Under the totality approach, a prisoner is in *Miranda* custody only when he experiences "an added imposition on his freedom of movement" or "a[] measure of compulsion above and beyond the confinement." *United States v. Menzer*, 29 F.3d 1223, 1232 (7th Cir. 1994) (alteration and citations omitted). In other words, the interviewer must impose "some restriction on [the prisoner's] freedom of action in connection with the interrogation itself." *Leviston v. Black*, 843 F.2d 302, 304 (8th Cir. 1988). If "there [are] no restrictions . . . over and above ordinary prison confinement," *Miranda* warnings are not required. *Georgison v. Donelli*, 588 F.3d 145, 157 (2d Cir. 2009) (citation omitted); accord *Ellison*, 632

"state agents *unaffiliated with the prison* isolated [him] and questioned him." 615 F.3d at 441 (emphasis added). As here, the court failed to explain how the interviewer's non-affiliation with the prison enhanced the coercive pressures on the inmate.

F.3d at 730; *United States v. Barner*, 572 F.3d 1239, 1245 (11th Cir. 2009).

Fields discounts each of these decisions as turning on one particular feature of the interview: the inmate in *Leviston* asked to speak with law enforcement; officers informed the *Menzer* defendant in advance that they wanted to interview him; and detectives met the *Georgison* prisoner in a visitor's room. See Br. in Opp. to Cert. at 10-13.

But no one fact controlled the analysis. Rather, each circuit "examined 'the totality of the circumstances' to determine whether the inmate was 'in custody' as set forth in *Miranda*." *Menzer*, 29 F.3d at 1232. Relevant factors included the initiating party's identity, the interview's location, its duration, the subject matter, the prisoner's ability to terminate the encounter, and the use of physical restraints or other strong-arm tactics. *Id.*; accord *Ellison*, 632 F.3d at 730; *Georgison*, 588 F.3d at 157; *Leviston*, 843 F.3d at 304.

This totality inquiry is the correct approach. First, it is faithful to precedent. This Court has consistently directed lower courts to "examine *all of the circumstances* surrounding the interrogation" to "determin[e] whether an individual was in custody." *Stansbury*, 511 U.S. at 322 (emphasis added); accord *Beheler*, 463 U.S. at 1125 ("[T]he circumstances of each case must certainly influence a determination of whether a suspect is 'in custody.'"). The Sixth Circuit's rule, which "obviate[s] fact-specific inquiries . . . into the precise circumstances of prison interrogations," runs headlong into that pronouncement. Pet. App. 20a.

Second, a totality inquiry best measures "how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, 468 U.S. at 442. Whether or not "a reasonable person [would] have felt . . . at liberty to terminate the interrogation" turns on all aspects of "the scene" and "the players' lines and actions." *Thompson*, 516 U.S. at 112. The location of the interview is just one component. Thus, a prisoner's segregation from the general population might be probative of a custodial setting—but it is not determinative. An examination of the entire scene—an open room, the presence of only one officer, the availability of food and drink, or an advisement that the prisoner can terminate the interview—may confirm the opposite. By focusing myopically on only one feature of the encounter, the Sixth Circuit's custody inquiry is incomplete and, therefore, deficient.

Third, a totality inquiry affords better protection for suspects. A categorical rule that focuses on only one factor is easy to evade. But the totality test prevents improper circumvention of *Miranda* precisely because it examines *all* of the circumstances surrounding a prison interview.

By any objective measure, the totality approach to *Miranda* custody in the prison setting is the correct one. And under that measure, Fields is not entitled to habeas relief: As the Michigan appellate court found, all restraints on Fields's freedom flowed from "a matter unrelated to the interrogation" and detectives unequivocally informed Fields "that he was free to leave the conference room and return to his cell." Pet. App. 56a. Because Fields did not experience any restraints or coercive

pressures above those inherent in prison life, he was not "in custody" under *Miranda*.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

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AMICUS CURIAE BRIEF

No. 10-680

IN THE

Supreme Court of the United States

CAROL HOWES, WARDEN,

Petitioner,

v.

RANDALL LEE FIELDS,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR DONOVAN E. SIMPSON AS AMICUS CURIAE SUPPORTING RESPONDENT

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STATEMENT OF INTEREST

Amicus Donovan E. Simpson is an Ohio prison inmate who has been granted partial federal habeas relief by the U.S. Court of Appeals for the Sixth Circuit. *See Simpson* v. *Jackson*, 615 F.3d 421 (6th Cir. 2010). The State of Ohio's petition for certiorari seeking review of that decision remains pending. *See Sheets* v. *Simpson*, No. 10-458. Mr. Simpson has a direct interest in this case because the Sixth Circuit's grant of relief rested in part on its resolution of a question similar to the one presented here—indeed, this Court is presumably holding Ohio's petition pending its decision in this case.[1]

Like Respondent Randall Lee Fields, Mr. Simpson was convicted based on statements he made during police interviews conducted while he was serving a prison sentence for an unrelated offense. Also like Mr. Fields, Mr. Simpson was interrogated by officers unaffiliated with the prison after first being isolated from the general population. The Sixth Circuit held that these circumstances meant Mr. Simpson was in "custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The court later relied on its decision in Mr. Simpson's case in rendering the decision under review here.

The Court's disposition of this case should not affect Mr. Simpson's ultimate entitlement to the writ be-

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[1] Pursuant to Supreme Court Rule 37.6, counsel for Mr. Simpson states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than Mr. Simpson or his counsel made a monetary contribution intended to fund the preparation and submission of this brief. Counsel of record for all parties have consented to the filing of this brief. The statements of consent have been submitted to the Clerk with this filing.

cause the Sixth Circuit's grant of relief also rested on an unrelated and independently sufficient ground. In addition, the circumstances of Mr. Simpson's interrogations differed from those at issue here in potentially significant ways. Most importantly, Mr. Simpson, unlike Mr. Fields, was never told that he was free to terminate his interrogations and return to his cell. But Mr. Simpson nonetheless has a substantial interest in this case because this Court's decision will likely influence its disposition of Ohio's pending petition for certiorari and would govern any further proceedings in the event of a remand.

SUMMARY OF ARGUMENT

This Court's precedents establish that when police isolate a prisoner from the general population and interrogate him about a crime that occurred outside the prison, that inmate is in "custody" for *Miranda* purposes. The Michigan Court of Appeals' decision was contrary to, or an unreasonable application of, that clearly established law, and the Sixth Circuit thus properly held that Mr. Fields is entitled to federal habeas relief.

1. As an initial matter, a state-court decision is "contrary to" clearly established law for purposes of 28 U.S.C. § 2254(d)(1) if the state court applies a rule that conflicts with this Court's precedent. Here, the Michigan Court of Appeals held that an incarcerated suspect need not be given *Miranda* warnings prior to an interrogation unless there is a "nexus" between the incarceration and the interrogation—that is, unless the suspect was taken into or kept in custody to facilitate police questioning. As even Michigan and its amici acknowledge, *Mathis* v. *United States*, 391 U.S. 1 (1968), unequivocally rejected any such requirement. Accord-

ingly, § 2254(d)(1)'s prerequisite for habeas relief is satisfied, and this Court should determine de novo whether Mr. Fields was in *Miranda* "custody" during his interrogation.

2. In any event, even apart from this error in the Michigan court's reasoning, Mr. Fields is also entitled to federal habeas relief because that court's result was contrary to *Mathis*. In *Mathis*, this Court held that a prison inmate was in "custody" for *Miranda* purposes when—as here—officers unaffiliated with the prison interrogated him about a crime occurring outside the prison walls. Lower courts have consistently interpreted *Mathis* to hold that prison interrogations conducted under such circumstances are custodial, and nothing in this Court's subsequent decisions has undermined that conclusion. To the contrary, in holding that incarceration alone, without these additional features, does *not* qualify as *Miranda* custody, this Court's recent decision in *Maryland* v. *Shatzer*, 130 S. Ct. 1213 (2010), reiterated that an inmate *is* in *Miranda* custody during the sort of interrogation at issue here.

3. Even setting *Mathis* aside, moreover, it was an unreasonable application of this Court's other precedents to hold that an inmate who has been isolated and subjected to interrogation by officers from outside the prison was not in *Miranda* custody. Ordinarily, the test for *Miranda* custody is whether the suspect has been deprived of his freedom of movement to a degree associated with a formal arrest. That test is plainly satisfied where, as here, the suspect is incarcerated. And although this Court has created exceptions for a few narrow situations in which a suspect deprived of his freedom of movement is nonetheless not in *Miranda* custody, its reasons for doing so cannot reasonably be extended to interrogations like those at issue here.

4. Finally, Michigan and its amici seek to escape the conclusion dictated by this Court's precedents by proposing to narrow *Mathis* in two ways. Both should be rejected.

First, Michigan and the United States contend that a prison interrogation should be deemed "custodial" only if a court determines that the circumstances of that particular interrogation were coercive. But while this Court has held that certain *categories* of questioning do not present a danger of coercion and so do not require warnings, it has never suggested that *Miranda*'s application turns on such a *case-by-case* inquiry. To the contrary, a principal purpose of *Miranda* was to avoid the need for precisely this sort of difficult assessment of coercion in individual cases.

Second, Michigan argues more narrowly that Mr. Fields was not in *Miranda* custody because he was told that he was free to end his interrogation and return to his cell. Outside the prison context, a suspect who is told that he is free to leave generally is not in *Miranda* custody precisely because the test for custody is ordinarily whether a reasonable person would feel that his freedom of movement has been restricted. But the same cannot be said in the prison setting, where—as this Court has recognized—an inmate's freedom of movement is *always* restricted. And merely advising an inmate that he can end the interview and be escorted back to his cell does not remove an otherwise-custodial interview from *Miranda*'s scope.

ARGUMENT

I. BECAUSE THE MICHIGAN COURT APPLIED A RULE FORECLOSED BY *MATHIS*, THIS COURT SHOULD DECIDE THE *MIRANDA* CUSTODY ISSUE WITHOUT APPLYING AEDPA DEFERENCE

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), a federal court may grant a writ of habeas corpus based on a "claim that was adjudicated on the merits in State court proceedings" if the state-court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). In applying the statute's "contrary to" prong, this Court has emphasized that "a state-court decision will certainly be contrary to [its] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [this Court's] cases." *Williams* v. *Taylor*, 529 U.S. 362, 405 (2000); *accord Brown* v. *Payton*, 544 U.S. 133, 141 (2005); *Bell* v. *Cone*, 543 U.S. 447, 452-453 (2005); *Mitchell* v. *Esparza*, 540 U.S. 12, 15-16 (2003); *Early* v. *Packer*, 537 U.S. 3, 8 (2002).

In this case, the Michigan Court of Appeals' decision was "contrary to" clearly established law in this sense because it applied a rule this Court squarely rejected in *Mathis*.[2] The court stated that Mr. Fields was "unquestionably in custody" but denied relief based on

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[2] The Michigan Court of Appeals' decision is the relevant one for purposes of § 2254(d)(1) because it was the last state-court decision to address Mr. Fields's claim on the merits. Pet. App. 52a; *see, e.g.*, *Lockyer* v. *Andrade*, 538 U.S. 63, 68-69, 73 (2003) (applying § 2254(d)(1) to an intermediate appellate court's decision after the state supreme court denied discretionary review).

what it called the "'nexus theory.'" Pet. App. 56a-57a & n.3. That rule provides that "'[i]n addition to the elements of "custody" and "interrogation," there must be some nexus between these elements in order for *Miranda* to apply.'" Pet. App. 56a (quoting *People* v. *Herndon*, 633 N.W.2d 376, 396 (Mich. Ct. App. 2001), and *People* v. *Honeyman*, 546 N.W.2d 719, 723 (Mich. Ct. App. 1996)). In other words, the Michigan Court of Appeals holds that *Miranda* warnings are required only if the suspect was "taken into, or maintained in, custody to facilitate his interrogation." *Honeyman*, 546 N.W.2d at 723; *see Herndon*, 633 N.W.2d at 396.

As the Sixth Circuit explained, this "nexus" test was created "without citation to federal authority" and is contrary to this Court's precedent. Pet. App. 14a. In *Mathis*, this Court held that a prison inmate was entitled to *Miranda* warnings prior to an interrogation despite the fact that he "had not been put in jail by the officers questioning him, but was there for an entirely separate offense." *Mathis* v. *United States*, 391 U.S. 1, 4 (1968). In so doing, the Court emphatically rejected the suggestion that *Miranda* applies "only to questioning [of] one who is 'in custody' in connection with the very case under investigation." *Id.* The Court concluded that there is "nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody" and accordingly dismissed a rule essentially identical to the one adopted by the Michigan Court of Appeals as having "no substance" and "go[ing] against the whole purpose of the *Miranda* decision." *Id.* at 4-5.

As explained below, *see infra* Part II, the full significance of *Mathis* is disputed here. But even Michigan and its amici, who would read this Court's decision

as narrowly as possible, acknowledge that it rejected any claim that *Miranda* applies only to suspects "being held for the purpose of questioning." Pet. Br. 14; *see also* U.S. Br. 19; Ohio Br. 5-6. No party attempts to defend anything like the "nexus" rule.

The Michigan Court of Appeals thus "applie[d] a rule that contradicts the governing law set forth" in *Mathis*. *Williams*, 529 U.S. at 405.[3] Under these circumstances, this Court has held that federal habeas courts are "unconstrained by § 2254(d)(1) because the state-court decision falls within that provision's 'contrary to' clause." *Id.* at 406. In other words, because "the requirement set forth in § 2254(d)(1) is satisfied," this Court "must ... resolve [Mr. Fields's] claim without the deference AEDPA otherwise requires." *Panetti* v. *Quarterman*, 551 U.S. 930, 953 (2007); *see also Cullen* v. *Pinholster*, 131 S. Ct. 1388, 1410-1411 (2011) (explaining that *Williams* "did not apply AEDPA deference" because it was "reviewing a state-court decision that did not apply the correct legal standard").[4]

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[3] The Michigan Court of Appeals also observed in passing that Mr. Fields was told that he could end the interview and return to his cell. Pet. App. 56a. But the court did not explain the relevance of that fact to its analysis (if any), and the only legal standard it articulated was the erroneous "nexus" test. Indeed, the court specifically emphasized that it was bound by its past decisions announcing that test "'under the rule of stare decisis.'" Pet. App. 56a-57a & n.3.

[4] Michigan briefly suggests that the Sixth Circuit improperly applied a new rule in violation of *Teague* v. *Lane*, 489 U.S. 288 (1989). *See* Pet. Br. 18 n.2. To the extent that the Court deems this footnote sufficient to raise a *Teague* issue at all, it comes too late. A habeas court must consider *Teague* "in addition to performing any analysis required by AEDPA," but only where the

The Sixth Circuit's decision should therefore be affirmed if this Court determines that Mr. Fields was in *Miranda* custody under a de novo application of the correct legal rule. The rest of this brief demonstrates, in the alternative, that the Sixth Circuit's decision was correct even if "the deference AEDPA [ordinarily] requires," *Panetti*, 551 U.S. at 953, applies here. And because Mr. Fields's claim satisfies that heightened test, it follows *a fortiori* that he should also prevail under the appropriate de novo standard.

II. *MATHIS* CLEARLY ESTABLISHES THAT *MIRANDA* WARNINGS ARE REQUIRED PRIOR TO INTERROGATIONS LIKE THE ONE AT ISSUE HERE

Miranda "concluded that the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements." *Dickerson* v. *United States*, 530 U.S. 428, 435 (2000). The Court therefore held that "the admissibility in evidence of any statement given during custodial interrogation of a suspect would depend on whether the police provided the suspect with [the] four warnings" that "have come to be known colloquially as '*Miranda* rights.'" *Id.*

Miranda defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

Teague issue "is properly raised by the state." *Horn* v. *Banks*, 536 U.S. 266, 272 (2002). Here, Michigan failed to raise the issue in its briefs in the district court or the Sixth Circuit, and mentioned it only in a footnote in its petition for certiorari. Accordingly, it is waived. *See, e.g.*, *Hopkins* v. *Reeves*, 524 U.S. 88, 94 n.3 (1998) (declining to consider *Teague* where "the State raised th[e] argument for the first time in its petition").

Miranda v. *Arizona*, 384 U.S. 436, 444 (1966). Shortly thereafter, *Mathis* held that a prison inmate was in *Miranda* custody when agents from outside the prison questioned him about an offense unrelated to his incarceration. Lower courts have consistently interpreted *Mathis* to establish that interrogations conducted under those circumstances are custodial, and nothing in this Court's subsequent precedents has undermined that conclusion. To the contrary, this Court's recent decision in *Shatzer* further confirmed it—at least where, as here, the inmate was isolated from the general prison population prior to questioning.

Mr. Fields, like the inmate in *Mathis*, was interrogated by officers from outside the prison about a crime unrelated to his incarceration. The Michigan Court of Appeals nonetheless held that he was not entitled to *Miranda* warnings. That conclusion was "contrary to" *Mathis* within the meaning of § 2254(d)(1) because "the state court confront[ed] a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrive[d] at a result different from [this Court's] precedent." *Williams*, 529 U.S. at 406. The contrary arguments raised by Michigan and its amici rest on a misstatement of the issues raised and resolved in *Mathis* itself, an erroneous understanding of subsequent legal developments, and a misinterpretation of this Court's discussion of the issue in *Shatzer*.

A. *Mathis* Held That Interrogations Like The One At Issue Here Are Custodial

In *Mathis*, this Court reviewed a conviction resting in part on unwarned statements "obtained from [a suspect] by a government agent while [the suspect] was in prison serving a state sentence." 391 U.S. at 2. The defendant had been interviewed by an IRS agent on

two occasions as part of a "routine tax investigation." *Id.* at 3-4 & n.2. The Fifth Circuit held that no *Miranda* warnings were required because those interviews "cannot be properly viewed as subjecting [the defendant] to the overbearing psychological pressures incident to the 'custodial interrogation' contemplated in *Miranda*." *Mathis* v. *United States*, 376 F.2d 595, 597 (5th Cir. 1967). This Court reversed, emphasizing that "[i]n speaking of 'custody' the language of the *Miranda* opinion is clear and unequivocal" and concluding that the defendant's unwarned statements were inadmissible because he had been in "custody" within the meaning of *Miranda*. 391 U.S. at 5.

1. Michigan and the amici States seek to minimize the significance of *Mathis* by repeatedly asserting that the Court did not actually hold that the interrogation at issue was custodial because "the government had conceded the point that the defendant was in custody." Pet. Br. 14; *see also id.* at 16-17; Ohio Br. 5 ("the federal government conceded that the *Mathis* prisoner was in custody"). This characterization is central to Michigan's characterization of *Mathis*, and it is demonstrably incorrect.

Far from making the concession that Michigan describes, the government argued vigorously and at length that the defendant in *Mathis* was not questioned while in "the type of custody involved in [*Miranda*]." U.S. Br. 17, *Mathis*, No. 67-726, 1968 WL 129324 (U.S. Feb. 26, 1968); *see also id.* at 7 (arguing that the interrogation at issue lacked the "compelling pressures" that are "incident to the type of custodial interrogation exemplified by [*Miranda*]"); *id.* at 17-19 (same). In rejecting these arguments and suppressing the statements at issue, therefore, *Mathis* necessarily determined that the defendant *was* in "custody" for purposes of

Miranda. Indeed, the dissent described the Court's holding in precisely those terms, as "concluding that petitioner was 'in custody' in the sense in which that phrase was used in *Miranda*." 391 U.S. at 7 (White, J., dissenting).[5]

This Court's subsequent decisions confirm this interpretation by consistently characterizing *Mathis* as holding that the defendant in that case was in *Miranda* custody. *See, e.g.*, *New York* v. *Quarles*, 467 U.S. 649, 654 & n.4 (1984) (*Mathis* held that a "prison cell during [the] defendant's sentence for an unrelated offense" was a "custodial circumstance[]"); *Oregon* v. *Mathiason*, 429 U.S. 492, 494-495 (1977) (discussing *Mathis* while reviewing precedents defining "custodial interrogation"); *Beckwith* v. *United States*, 425 U.S. 341, 347 (1976) (*Mathis* "squarely grounded its holding on the custodial aspects of the situation").

2. *Mathis* thus held that the prison inmate in that case was in *Miranda* "custody" when he was questioned by IRS agents about an offense unrelated to his incarceration. In so doing, moreover, the Court did not inquire any further into the particular circumstances of the interviews—for example, it did not require a showing that the inmate had been placed under special restraints on his freedom of movement or otherwise subjected to especially coercive treatment.

Michigan and its amici contend that the Court's failure to address these details somehow indicates that

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[5] Notably, the United States' brief in this case declines to endorse Michigan's erroneous characterization of the government's position in *Mathis* and correctly concedes that "the necessary premise" of this Court's decision was "that Mathis was in custody for *Miranda* purposes." U.S. Br. 18.

Mathis does not establish a rule about *Miranda* custody in the prison context. *See* Pet. Br. 16; U.S. Br. 18-19; Ohio Br. 6. But that has it exactly backwards: The fact that the Court held an interrogation by officers from outside the prison about an unrelated offense to be custodial *without* requiring any additional facts necessarily means that the Court concluded that those circumstances, without more, were sufficient to establish *Miranda* custody.

Any doubt about that conclusion is removed by the *Mathis* dissent and the government's brief. Justice White's dissent argued that the defendant had been questioned "in familiar surroundings" and that "[n]either the record nor the Court suggests reasons why petitioner was 'coerced' into answering [the agent's] questions any more than is the citizen interviewed at home." 391 U.S. at 7 (White, J., dissenting); *see also id.* at 8 (criticizing "[t]he Court's willingness to reverse without explaining why the reasons given for the *Miranda* decision have any relevance to the facts of this case"). The government, for its part, argued that "[w]hatever facts may be presented by other instances of prison questioning, ... the circumstances of this case exhibit no 'pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.'" U.S. Br. 19, *Mathis*, 1968 WL 129324. In particular, the government noted that the defendant "was interviewed in surroundings which had been familiar to him for twenty months," *id.* at 17; that the agent asked him "only two questions," neither of which was accusatory, *id.*; that there was "nothing in the agent's purpose or his manner which might be characterized as having a potential for undermining [the defendant's] desire to remain silent," *id.* at 7; and that the defendant "could hardly

[have] believe[d] that anything he might say to [the agent] could relieve him of any of the consequences of his State sentence," *id.* at 18.

In the face of these arguments from the government and the dissenting Justices, the Court's failure to address the additional circumstances of the interviews at issue in *Mathis* cannot be interpreted as anything other than a conclusion that they did not matter to its holding that the defendant was in *Miranda* custody. *Mathis* thus establishes that a prison inmate is in custody for *Miranda* purposes when, as in that case and this one, he is interrogated by officers unaffiliated with the prison about criminal conduct occurring beyond the prison walls.

B. Lower Courts Have Interpreted *Mathis* To Hold That Interrogations Like The One At Issue Here Are Custodial

Michigan objects that "no other circuit has interpreted [*Mathis*] to create the bright-line rule now adopted by the Sixth Circuit." Pet. Br. 20. But that claim is refuted by the very case on which Michigan itself chiefly relies. As Michigan and its amici acknowledge, the leading circuit court precedent on *Miranda* custody in the prison context is *Cervantes* v. *Walker*, 589 F.2d 424 (9th Cir. 1978). *See* Pet. Br. 23; U.S. Br. 25-28; Ohio Br. 13-14. And the Ninth Circuit's reading of *Mathis* in *Cervantes* is entirely consistent with the Sixth Circuit's interpretation in the decision below.[6]

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[6] Michigan also mischaracterizes the nature of the Sixth Circuit's rule. The "bright-line rule" that the other circuits have "refused to recognize," Pet. Br. 20, is a rule that every prison inmate is "automatically always in 'custody' within the meaning of

In *Cervantes*, the Ninth Circuit declined to read *Mathis* as "creat[ing] a per se rule that any investigatory questioning inside a prison requires *Miranda* warnings." 589 F.2d at 427. Such a rule, the court explained, would "totally disrupt prison administration" because it would prevent prison officials from engaging in "'[g]eneral on-the-scene'" questioning about incidents occurring in the prison. *Id.* Accordingly, the court concluded that a prisoner is in *Miranda* custody only if he is interrogated under circumstances in which "a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting." *Id.* at 428.

Michigan and its amici rely heavily on this "added restriction" rule, asserting that it is inconsistent with the Sixth Circuit's decision. *See* Pet. Br. 20-23; U.S. Br. 26; Ohio Br. 13-15. Indeed, the United States effectively urges this Court to adopt the *Cervantes* rule, albeit without specifically attributing it to the Ninth Circuit. *See* U.S. Br. 12 (arguing that a prisoner is in *Miranda* custody only when he is subjected to "restrictions above and beyond those incident to normal prison life"). But Michigan and its amici ignore *Cervantes*'s

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Miranda" such that warnings would be required prior to *any* questioning by government agents, including "myriad informal conversations between inmates and prison guards," *United States* v. *Conley*, 779 F.2d 970, 973 (4th Cir. 1985). Although the Sixth Circuit called its approach a "bright line test," Pet. App. 18a, it is quite narrow, applying only when (1) officers unaffiliated with the prison (2) isolate a prison inmate to (3) question him about criminal conduct occurring outside the prison, and where (4) the inmate neither initiated contact with the officers nor agreed to the interview in advance, *see* Pet. App. 10a-12a & nn. 3-4 (announcing the Sixth Circuit's rule and distinguishing cases lacking these features).

clear and specific discussion of *Mathis*, which is entirely consistent with the Sixth Circuit's reading:

> [The "added restriction" test] best reconciles *Mathis* with the principles of *Miranda*. The questioning of Mathis by a government agent, not himself a member of the prison staff, on a matter not under investigation within the prison itself *may be said to have constituted an additional imposition on his limited freedom of movement*, thus requiring *Miranda* warnings.

589 F.2d at 428 (emphasis added). In other words, *Cervantes* made clear that the type of interrogation at issue in *Mathis* and in this case requires *Miranda* warnings because such interrogation *by definition* constitutes an "added restriction" on a prisoner's freedom. *See id.* And the Ninth Circuit has since confirmed this interpretation, relying on this language from *Cervantes* to hold that *Miranda* warnings were required before an interrogation possessing these features. *See United States* v. *Cheely*, 36 F.3d 1439, 1447 (9th Cir. 1994).

Michigan also relies on *United States* v. *Conley*, 779 F.2d 970 (4th Cir. 1985). *See* Pet. Br. 22-23. But *Conley* is equally consistent with the Sixth Circuit's approach: The Fourth Circuit held that an inmate was not in *Miranda* custody when he was questioned by guards escorting him to the infirmary after an incident in the prison, *id.* at 973-974, but then stated that the inmate *was* in custody under *Mathis* and *Cervantes* during a subsequent interrogation by an FBI investigator because "'[h]e's an outside agent who's come in [to the prison],'" *id.* at 974 n.5.

Numerous other circuits have likewise endorsed the *Cervantes* approach. *See, e.g.*, *Garcia* v. *Singletary*, 13 F.3d 1487, 1491-1492 (11th Cir. 1994); *United States*

v. *Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984). And courts applying that approach consistently hold that, in the absence of special circumstances not present here, inmates interrogated by officers from outside the prison about criminal conduct unrelated to their incarceration are in *Miranda* custody. *See, e.g.*, *Jackson* v. *Giurbino*, 364 F.3d 1002, 1008 (9th Cir. 2004); *United States* v. *Chamberlain*, 163 F.3d 499, 503-504 (8th Cir. 1998); *United States* v. *Byram*, 145 F.3d 405, 409 & n.1 (1st Cir. 1998); *Cheely*, 36 F.3d at 1447.[7]

C. This Court's Subsequent Cases Confirm This Interpretation Of *Mathis*

Michigan and the United States contend that the Sixth Circuit's reading of *Mathis* cannot be correct because *Illinois* v. *Perkins*, 496 U.S. 292, 299 (1990), stated that "[t]he bare fact of custody may not in every instance require a warning." *See* Pet. Br. 19; U.S. Br. 19. Michigan also relies on *Shatzer*'s statement that prior to that case, this Court "ha[d] never decided whether incarceration constitutes custody for *Miranda* purposes, and ha[d] indeed explicitly declined to address the issue," *Maryland* v. *Shatzer*, 130 S. Ct. 1213, 1224 (2010). *See* Pet. Br. 19. These arguments misunderstand the legal background for and significance of this Court's statements in *Perkins* and *Shatzer*.

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[7] Michigan and its amici cite other circuit court decisions holding particular prison interrogations to be non-custodial. As Mr. Fields demonstrates, however, those precedents are distinguishable—and, in many cases, actually were distinguished by the Sixth Circuit—because they involved the sort of on-the-scene questioning contemplated in *Cervantes* or because the interviews were initiated by the inmates themselves. *See* Resp. Br. 27-35.

1. Although *Mathis* established that prison interrogations conducted under circumstances like those present in that case are custodial, the lower courts generally followed *Cervantes* and *Conley* in holding that questioning of prison inmates under certain *other* circumstances does not require *Miranda* warnings—for example, if the prisoner initiated the conversation, *see, e.g.*, *Leviston* v. *Black*, 843 F.2d 302, 303 (8th Cir. 1988), or the questioning involved informal inquiries by guards about incidents occurring in the prison, *see, e.g.*, *Conley*, 779 F.2d at 973-974. At the same time, other judges—including Justice Marshall—argued that *Miranda* should be extended to *all* questioning of prison inmates, regardless of the surrounding circumstances. *See, e.g.*, *Perkins*, 496 U.S. at 303-304 (Marshall, J., dissenting); *Bradley* v. *Ohio*, 497 U.S. 1011, 1015 (1990) (Marshall, J., dissenting from denial of certiorari); *United States* v. *Morales*, 834 F.2d 35, 40 (2d Cir. 1987) (Oakes, J., concurring); *United States* v. *Cadmus*, 614 F. Supp. 367, 371-372 (S.D.N.Y. 1985).

This Court's statement in *Perkins* that "[t]he *bare fact* of custody may not in every instance require a warning," 496 U.S. at 299 (emphasis added), simply recognized that this question remained unsettled. Nothing in *Perkins* remotely suggested that *Mathis*'s finding of custody was no longer good law on facts like those in *Mathis* itself. Similarly, *Shatzer*'s observation that this Court "ha[s] never decided whether incarceration constitutes custody for *Miranda* purposes," 130 S. Ct. at 1224, likewise referred what *Perkins* called the "bare fact" of incarceration, not to a police interrogation like the one at issue in *Mathis*. Indeed, the Court's subsequent discussion in *Shatzer* made clear that the type of "incarceration" it was addressing was the "period during which a suspect was not interrogated, but was sub-

ject to a baseline set of restraints imposed pursuant to a prior conviction." *Id.*

2. *Shatzer* also went on to remove any doubt about the correctness of the Sixth Circuit's decision here. That case concerned statements made by a suspect interviewed on two occasions while incarcerated for an unrelated offense. The specific question presented was whether that suspect was in "custody" for *Miranda* purposes during the two-and-a-half years *between* those interrogations, such that *Edwards* v. *Arizona*, 451 U.S. 477 (1981), barred the police from attempting to interrogate him a second time after he invoked his right to counsel during the first interview. The Court resolved the question left open in *Perkins*, holding that mere incarceration, without more, does not constitute "custody for *Miranda* purposes." 130 S. Ct. at 1224.

In holding that ordinary incarceration is not *Miranda* custody, however, the Court was careful to "distinguish the duration of incarceration from the duration of what might be termed interrogative custody." 130 S. Ct. at 1225 n.8. The Court explained that "[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of *that separation* is assuredly dependent upon his interrogators" and accordingly *does* constitute *Miranda* custody. *Id.* Accordingly, the Court explained that "[t]he 'inherently compelling pressures' of custodial interrogation *ended* when [the suspect] returned to his normal life" in the general population. *Id.* at 1225 (emphasis added). The Court thus expressly recognized that during the period when the inmate was removed from the general population and subjected to interrogation, he *was* subject to the "'inherently compelling pressures' of custodial interro-

gation." And—in contrast to its discussion of the *Miranda* status of ordinary incarceration—the Court gave no indication that it believed that these statements broke new ground or constituted a change in the law.

Although they speak directly to the question at issue here, Michigan and the United States largely ignore these statements from *Shatzer*. Instead, they focus on the Court's observation that "[n]o one question[ed] that Shatzer was in custody for *Miranda* purposes during the interviews" themselves, 130 S. Ct. at 1224. *See* Pet. Br. 18; U.S. Br. 20. But although the custodial status of the interrogations was not contested by the parties, *Shatzer*'s reaffirmation that the inmate in that case was in custody during the interviews themselves was not mere dicta. *Shatzer* elaborated on *Edwards* by establishing a bright-line rule that police may initiate questioning of a suspect who has previously invoked his *Miranda* right to counsel if and only if he has experienced a "break in custody" of more than "14 days." 130 S. Ct. at 1222-1223. The Court made clear that its distinction between ordinary incarceration (which is not *Miranda* custody) and "interrogative custody" (which is) was an important qualification to this 14-day rule, explaining that "once he has asserted a refusal to speak without assistance of counsel[,] *Edwards* prevents any efforts to get [a suspect incarcerated for an unrelated offense] to change his mind *during that interrogative custody*." *Id.* at 1225 n.8 (emphasis added).

III. The Michigan Court Of Appeals' Decision Was An Unreasonable Application Of This Court's Other Precedents Defining *Miranda* Custody

For the foregoing reasons, the Michigan Court of Appeals' decision was "contrary to" *Mathis* because that court "confront[ed] a set of facts that are materially indistinguishable from [*Mathis*] and nevertheless arrive[d] at a result different from [this Court's] precedent." *Williams*, 529 U.S. at 406. But even if that were not true, Mr. Fields would still be entitled to habeas relief under 28 U.S.C. § 2254(d)(1) because the result reached by the Michigan Court of Appeals was an "unreasonable application" of this Court's precedents defining *Miranda* custody.

1. Ordinarily, the test for *Miranda* custody is whether the suspect has been subjected to "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983). That test requires a court to consider the "circumstances surrounding the interrogation" to determine whether "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995).

Although this "freedom-of-movement test" is usually determinative, it "identifies only a necessary and not a sufficient condition for *Miranda* custody." *Shatzer*, 130 S. Ct. at 1224. It is not sufficient because this Court has identified four circumstances in which a suspect is deprived of his freedom of movement and yet does not face the coercive pressures that motivated the *Miranda* rule. Those circumstances are questioning during an ordinary traffic stop, *see Berkemer* v. *McCarty*, 468 U.S. 420, 437-439 (1984); the brief ques-

tioning associated with an investigative stop conducted pursuant to *Terry* v. *Ohio*, 392 U.S. 1 (1968), *see Berkemer*, 468 U.S. at 439-440; ordinary incarceration in the general prison population, *see Shatzer*, 130 S. Ct. at 1225-1225; and questioning by an undercover officer, *see Perkins*, 496 U.S. at 300.

2. When officers from outside the prison isolate an inmate from the general population and interrogate him about an unrelated offense, that inmate has unquestionably been subjected to a "'restraint on freedom of movement' of the degree associated with a formal arrest." *Beheler*, 463 U.S. at 1125. Indeed, as this Court recently emphasized, "[t]his test, no doubt, is satisfied by all forms of incarceration." *Shatzer*, 130 S. Ct. at 1224. Moreover, an interrogation conducted under these circumstances does not fall into any of the narrow categories that this Court has excepted from the general rule that suspects who have been deprived of their freedom of movement are entitled to *Miranda* warnings before any interrogation.

3. Nor can this Court's reasons for carving out those exceptions reasonably be extended to apply to interrogations where, as here, an inmate is isolated from the general population and questioned by officers unaffiliated with the prison about an offense occurring outside the prison walls.

The premise of *Miranda* is that custodial interrogation creates "inherently compelling pressures" that impair the exercise of Fifth Amendment rights and make it difficult to distinguish voluntary from involuntary confessions. *Miranda* identified three features that contribute to these inherently compelling pressures: First, and most importantly, custodial interrogation generally takes place in "isolation" or "privacy,"

384 U.S. at 449-450, and "[t]o be alone with the suspect is essential to prevent distraction and to deprive him of outside support," *id.* at 455; *see also id.* at 461 (describing "the compulsion to speak in the isolated setting of the police station"). Second, custodial interrogation often occurs in "unfamiliar surroundings." *Id.* at 450; *see also id.* at 461 (describing the pressures on "[a]n individual swept from familiar surroundings into police custody"). Third, the Court described the psychological pressures created by sophisticated police questioning, which, when combined with the isolation and unfamiliar surroundings of custodial interrogation, can allow police to "persuade, trick, or cajole [the suspect] out of exercising his constitutional rights." *Id.* at 455; *see id.* at 448-455.

Some or all of these features are absent in each of the categories of interrogation that this Court has held to be noncustodial despite restraints on the suspect's freedom of movement. *Perkins* explained that questioning by an undercover officer does not create the pressures of ordinary custodial interrogation because the suspect is not even aware that he is speaking to the police. 496 U.S. at 297. *Berkemer* concluded that two features of ordinary traffic stops and *Terry* stops render them noncustodial: First, the detention "is presumptively temporary and brief," generally lasting "only a few minutes." 468 U.S. at 437. Second, the circumstances "are not such that the motorist feels completely at the mercy of the police," primarily because "the typical traffic stop is public, at least to some degree." *Id.* at 438.

Similarly, *Shatzer* explained that "[s]entenced prisoners" in the general population "are not isolated with their accusers" because "[t]hey live among other inmates, guards, and workers, and often can receive visi-

tors and communicate with people on the outside by mail or telephone." 130 S. Ct. at 1224. The Court also noted that when incarcerated suspects are released from an interrogation back into the general population, they "return to their accustomed surroundings and daily routine." *Id.* Finally, the Court observed that once the interrogation ends, "[t]he former interrogator has no power to increase the duration of incarceration" and "no apparent power to decrease the time [to be] served." *Id.* at 1225.

The type of prison interrogation at issue here and in Mr. Simpson's case is very different. First, like the paradigmatic *Miranda* interrogation but unlike the interrogations at issue in *Shatzer* and *Berkemer*, it occurs in isolation—Mr. Fields, for example, was alone in a conference room with two officers, Pet. App. 3a-4a, and Mr. Simpson was likewise isolated with two law enforcement officers during his interviews, *see Simpson* v. *Jackson*, 615 F.3d 421, 441 (6th Cir. 2010).

Second, although an inmate may be familiar with the prison setting as a general matter, prison interrogations often occur in restricted or otherwise unfamiliar areas. Mr. Fields was taken to a conference room in the Sheriff's Department, Pet. App. 3a, and Mr. Simpson was questioned in a conference room in a prison administration building that was some distance from the portion of the facility where he was incarcerated and to which he would not otherwise have had access. *See Simpson*, 615 F.3d at 426-427. *Shatzer* expressly recognized this distinction, noting that an interrogated inmate is in familiar surroundings only *after* the interview is over and he is "released back into the general prison population." 130 S. Ct. at 1224.

Third, the seven-hour interrogation in this case, Pet. App. 4a, demonstrates that prison interrogations—unlike the traffic stops and *Terry* stops addressed in *Berkemer*—need not be of limited duration.

Finally, in contrast to the situation in *Shatzer*, an inmate being subjected to interrogation in isolation *is* in the immediate control of his interrogators. As *Shatzer* explained, "[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of *that separation* is assuredly dependent on his interrogators." 130 S. Ct. at 1225 n.8. Moreover, during questioning the interrogating officers will often be able to pressure the inmate by offering to obtain or support parole or other early release. Mr. Simpson's case illustrates the possibility for this sort of pressure: His interrogators offered to—and subsequently did—secure his early release from prison in exchange for his cooperation with their investigation. *See Simpson*, 615 F.3d at 425-426. The ability to offer to secure such release, or to offer to assist an inmate in obtaining parole, is a powerfully coercive device, and its use in Mr. Simpson's case was not an isolated occurrence.[8]

In sum, therefore, the type of prison interrogation at issue here reflects precisely the sort of "inherently compelling pressures" present in the paradigmatic

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[8] *See, e.g.*, *Allie* v. *Cunningham*, No. 08-cv-11082, 2009 WL 1883258, at *1 (S.D.N.Y. June 30, 2009) (a prosecutor "pledged ... to send a letter to [the inmate's] Parole Board detailing his assistance to the investigation"); *State* v. *Beck*, No. M2008-00467, 2009 WL 1312955, at *2 (Tenn. Crim. App. May 11, 2009) (inmate was "granted early release ... in exchange for his promise to assist ... in drug investigations").

Miranda interrogation and includes none of the mitigating features on which this Court relied in *Berkemer*, *Perkins*, and *Shatzer*. Far from "extend[ing] greater *Miranda* rights to prisoners than members of the general population," Pet. Br. 30, the Sixth Circuit's decision simply recognizes that the type of prison interrogation at issue here creates the sort of coercive pressures against which *Miranda* was intended to protect. This Court recognized precisely that point in *Berkemer*. It explained that "the atmosphere surrounding an ordinary traffic stop is substantially less 'police dominated' than that surrounding the kinds of interrogation at issue in *Miranda* itself and the subsequent cases in which we have applied *Miranda*," 468 U.S. at 438-439 (citation omitted). It then cited *Mathis* as one of these subsequent applications of *Miranda*, thereby identifying "question[ing] by a Government agent while [the suspect is] in jail" as the sort of "police dominated" atmosphere in which *Miranda* warnings are necessary. *Id.* at 439 n.28.

Accordingly, the Michigan Court of Appeals' conclusion that Mr. Fields was not in custody was an "'unreasonable application of' the clear law as established by this Court" because the state court "relied on [an] inapplicable exception" to this Court's general rule that a suspect is in custody whenever he is questioned after being deprived of his freedom of movement in a significant way. *Williams*, 529 U.S. at 397.

IV. THIS COURT SHOULD REJECT MICHIGAN'S INVITATIONS TO NARROW *MATHIS*

As demonstrated above, *Mathis* established—and *Shatzer* confirmed—that *Miranda* warnings are required when police isolate an inmate from the general population and interrogate him about an offense occur-

ring outside the prison. Michigan and the United States urge this Court to narrow *Mathis* by adopting a new rule for *Miranda* custody in the prison context. Both Michigan and the United States contend that a prison interrogation should not be deemed custodial unless a reviewing court finds that the circumstances of that particular interrogation created a risk of coercion. Michigan also argues, more narrowly, that a prison interrogation is not custodial where, as here, the prisoner is told that he is free to terminate the interrogation and return to the general prison population. Both arguments should be rejected.

A. *Miranda* Custody Does Not Depend On A Case-By-Case Inquiry Into Whether The Circumstances Of An Interrogation Were Coercive

The United States asserts that the *Miranda* custody inquiry for a prison interrogation should depend on "the objective circumstances of the interview and whether those circumstances created the coercive pressures addressed in *Miranda*." U.S. Br. 9. Michigan likewise advocates "[a] context-specific approach" that "considers all the facts and circumstances to determine whether a prisoner's confession was voluntary." Pet. Br. 13. These arguments suffer from two fatal defects: They were advanced by the United States and rejected by this Court in *Mathis*, and they are fundamentally at odds with this Court's broader approach to *Miranda* custody.

1. As an initial matter, this sort of case-by-case inquiry was rejected in *Mathis*. There, the government "emphasized" that "[a]n individual's confinement in a penitentiary, combined with police interrogation seeking to elicit incriminatory statements for use in a crimi-

nal prosecution, may in some circumstances present the same 'compelling pressures' which were found in *Miranda* to inhere in stationhouse interrogation." U.S. Br. 18, *Mathis*, 1968 WL 129324. The government thus argued only that *Miranda* had no application in that case because—it claimed—the particular circumstances of the interrogation at issue were not coercive. *See id.* at 18-19.[9] In so doing, it advocated a case-by-case approach strikingly similar to the one Michigan and the United States propose here:

> *Miranda* may mean that in situations squarely within the framework of that case a court need determine only whether the warnings were given and need not inquire whether the particular interrogation was likely to compel the defendant to speak against his will. But where the issue is whether the *Miranda* safeguards should be required in significantly different circumstances, the purpose and manner of the questioning, its duration, and the effect of the subject's confinement on his ability to resist this type of questioning are all relevant ... to the determination whether the situation is characterized by "inherently compelling pressures."

Id. (footnote omitted). In holding that the defendant in *Mathis* was in custody without identifying any specific coercive features of the interrogation or inquiring into the allegedly non-coercive circumstances identified by

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[9] Michigan and the amici States are thus incorrect in arguing that the government advocated a "per se" rule that *Miranda* is inapplicable to prison interrogations. *See* Pet. Br. 15-16; Ohio Br. 5-6; *see also* U.S. Br. 18.

the government, this Court necessarily rejected its proposed case-by-case approach.

2. In any event, such a case-by-case approach is at odds with decades of precedent even apart from *Mathis*. To be sure, Michigan and the United States are correct that a reviewing court generally must examine "the circumstances surrounding the interrogation." *Thompson*, 516 U.S. at 112. But this Court has emphasized that although "a court must examine all of the circumstances surrounding the interrogation," "'the ultimate inquiry is simply whether there [was] a "formal arrest or restraint on freedom of movement" of the degree associated with formal arrest'"—not whether the particular interrogation was coercive. *Stansbury* v. *California*, 511 U.S. 318, 322 (1994); *see also Beheler*, 463 U.S. at 1125.

As explained above, this freedom-of-movement test unquestionably "is satisfied by all forms of incarceration." *Shatzer*, 130 S. Ct. at 1224. Michigan and the United States thus ask this Court to go further and hold that a prison inmate is not in *Miranda* custody unless the particular circumstances of the interrogation are coercive or render the confession involuntary. But this Court has never endorsed that sort of case-by-case inquiry. To the contrary, it has considered the coercive effect of the circumstances of police questioning only in holding that certain *categories* of interrogation do not raise the coercive pressures to which *Miranda* is addressed and thus are not properly considered "custodial" even if the suspect's freedom of movement has been restricted. In so doing, the Court has looked to the characteristics of the *type* of interrogation at issue and announced a general rule rather than prescribing a case-by-case inquiry. *See Shatzer*, 130 S. Ct. at 1224 ("lawful imprisonment imposed upon conviction of a

crime does not create the coercive pressures identified in *Miranda*"); *Perkins*, 496 U.S. at 300 ("[A]n undercover law enforcement officer posing as a fellow inmate need not give *Miranda* warnings to an incarcerated suspect before asking questions that may elicit an incriminating response."); *Berkemer*, 468 U.S. at 437 (observing that *Miranda* applies "only in those *types* of situations in which the concerns that powered the decision are implicated" and concluding that it does not apply to traffic stops or *Terry* stops (emphasis added)); *see also Pennsylvania* v. *Bruder*, 488 U.S. 9, 11 (1988) (describing "*Berkemer*'s rule" that "ordinary traffic stops do not involve custody for the purposes of *Miranda*").

More fundamentally, a case-by-case inquiry into the coercive effect of an individual interrogation is at odds with the premise of *Miranda* itself. Prior to *Miranda*, courts determined the admissibility of confessions by conducting a case-by-case inquiry into the totality of the circumstances surrounding the confession to determine whether it was voluntary. *See Dickerson*, 530 U.S. at 444. That voluntariness test proved hard to apply, and even harder to apply consistently. *See id.* Accordingly, one of the principal purposes of *Miranda* was "to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary." *Berkemer*, 468 U.S. at 433; *see Arizona* v. *Roberson*, 486 U.S. 675, 680 (1988). Michigan and the United States, however, would import precisely the same sort of difficult, case-by-case inquiry into *Miranda*'s threshold custody inquiry. The difficulty and potential arbitrariness of such an exercise is confirmed by the litany of factors identified by their briefs, which ask this court to consider the size, arrangement,

and lighting of the room in which the interrogation is conducted, Pet. Br. 33; whether the door was open or closed, *id.*; any restraints placed on the suspect, *id.*; the manner in which the suspect was escorted to the interview, U.S. Br. 29; the tone and content of the officers' questions, *id.*; whether the suspect was offered water, *id.*; the length of the interview, *id.*; and—presumably—any other fact that might be deemed relevant to whether the circumstances of the interview had a tendency to pressure Mr. Fields to waive his rights.[10]

Moreover, this Court has previously rejected attempts to make *Miranda* custody expand or contract depending on the coercive effect of a particular interrogation. *Mathiason* emphasized that "a noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.'" 429 U.S. at 495; *see also Beckwith*, 425 U.S. at 345. Likewise, a *custodial* situation is not converted into one in which *Miranda* does not apply simply because a reviewing court concludes that the particular circumstances were not coercive. *Cf. Estelle* v. *Smith*, 451 U.S. 454, 467 (1981) (*Miranda* warnings were required before a "psychiatrist desig-

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[10] To be sure, courts already examine the totality of the circumstances surrounding an interview to the extent they are relevant to the question whether "'a reasonable person [would] have felt he or she was at liberty to terminate the interrogation and leave.'" *J.D.B.* v. *North Carolina*, 131 S. Ct. 2394, 2402 (2011). But that is a far simpler task than the unbounded inquiry into coercion or voluntariness proposed by Michigan and its amici. *Cf. id.* (the benefit of the objective freedom-of-movement test is that "it is 'designed to give clear guidance to the police'").

nated by the trial court to conduct a neutral competency examination" could question a suspect awaiting trial).

This Court should continue to decline to convert the *Miranda* custody test into a case-by-case inquiry into the coercive effect of the circumstances of particular interrogations.

B. The Fact That Mr. Fields Was Advised That He Was Free To Terminate The Interview Should Not Alter This Result

Michigan also advances a narrower argument: that Mr. Fields should be deemed not to have been in custody because he was advised that he was free to terminate the interview and return to his cell. Pet. Br. 29; *see also id.* at 33 (characterizing this as the "[m]ost important" circumstance of the interrogation).

Because Mr. Simpson, unlike Mr. Fields, was not informed that he was free to leave his interrogations, this narrower ground for reversal would provide no reason to question the correctness of the Sixth Circuit's judgment in his case. Mr. Simpson would, of course, prefer such a decision to one that embraces the more radical narrowing of *Miranda* protections sought by Michigan's more sweeping arguments. Nonetheless, even that narrower ground should still be rejected as inconsistent with established precedent.

As Michigan recognizes, the ordinary *Miranda* custody inquiry is "whether a reasonable person would 'have felt he or she was not at liberty to terminate the interrogation and leave.'" Pet. Br. 28. It also concedes that "a prisoner is not free to leave the prison." *Id.* at 29. It asserts, however, that "the relevant question is whether the prisoner can leave the interrogation." *Id.*

But there is no basis for that proposed modification to the usual test. To the contrary, this Court has rejected it, observing that the "freedom-of-movement" component of the *Miranda* custody inquiry is "no doubt ... satisfied by all forms of incarceration." *Shatzer*, 130 S. Ct. at 1224. Accordingly, advising a suspect that he is free to end an interview does not have the same significance in the prison context as it does in other circumstances. *See United States* v. *Ellison*, 632 F.3d 727, 729 (1st Cir. 2010) (Souter, J.) ("Even when he is given the option to end the interrogation as he chooses, [a prison inmate] is not in the position of a suspect who is free to walk away and roam around where he pleases.").

This Court could add another category to those recognized in *Shatzer*, *Perkins*, and *Berkemer* by holding that notwithstanding the restrictions on freedom of movement to which all inmates are subject, inmates who would otherwise be in custodial interrogations are *not* in custody if they are first told that they can end the interview—which essentially amounts to a partial *Miranda* warning. But such a holding would be a step in the direction of the case-by-case approach that this Court has thus far eschewed, and would prompt difficult questions. What if the officers' actions undermine their verbal assurances? Or if they tell the suspect not that he is free to leave, but merely that he does not have to speak to them? Or if, as in this case, a suspect is told that he is free to leave the interview at any time, but doing so requires waiting with the officers for 20 minutes while a prison guard is summoned to escort him back to his cell?

Rather than inviting these difficult inquiries, the Court should simply adhere to the rule established by *Mathis* and *Shatzer*: "When," as here, "a prisoner is removed from the general prison population and taken

to a separate location for questioning" about an unrelated offense by officers from outside the prison, that inmate is in *Miranda* custody for the duration of that "interrogative custody." *Shatzer*, 130 S. Ct. at 1225 n.8.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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